

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§ CASE NO. 20-33948-11
	§ HOUSTON, TEXAS
FIELDWOOD ENERGY, LLC,	§ TUESDAY,
ET AL	§ JULY 6, 2021
DEBTORS.	§ 3:59 P.M. TO 5:39 P.M.

MOTION HEARING (VIA ZOOM)

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:	SEE NEXT PAGE
COURTROOM DEPUTY:	TYLER LAWS

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(Please also see Electronic Appearances.)

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...

1 HOUSTON, TEXAS; TUESDAY, JULY 6, 2021; 3:59 P.M.

2 THE COURT: All right. We're going to call
3 Fieldwood Energy, it is 20-33948. I'd like to start, if we
4 could, Mr. Zuber and Mr. Perez, with housekeeping as to what
5 you all are believing we are covering today. I think we have
6 two matters. One is whether we should issue a stay and the
7 other is, if we do issue a stay, how big, if any, should the
8 bond be as a condition of the stay.

9 And I didn't know if you all were intending to
10 introduce evidence on those, if you thought we were taking
11 both things up today or just one. And I wanted to just
12 understand where all thought we were so that I'm hearing what
13 you all intend for me to hear. I'm then going to ask the two
14 joinder parties to, anyone else, to expand on whatever you all
15 tell me.

16 But, Mr. Zuber, we'll start with you, it's your
17 motion.

18 MR. ZUBER: Thank you, Your Honor. We filed an
19 emergency motion for a stay pending appeal, or alternatively
20 for new consider of that portion of that portion of the
21 confirmation order that allowed the sale or transfer of
22 certain leases to the credit bid purchaser free and clear of a
23 surety's future subrogation rights.

24 We really would suggest that we could avoid this
25 whole fight over a stay pending appeal if we can address the

1 reconsideration. We respectfully submit, I know Your Honor's
2 decided this several times, we submit, Your Honor, that we
3 would like to argue the merits that the sale to a credit bid
4 purchaser should not be free and clear of these subrogation
5 rights. I'd also like to get in a little bit to Section 365
6 instead of 363.

7 So from my perspective, you know, if Your Honor
8 would be willing to reconsider the ruling, that portion of the
9 ruling that dealt with the free and clear, then we don't need
10 a stay pending appeal and we can just have the confirmation
11 order modified accordingly.

12 We've also asked for a stay pending appeal, and we
13 will -- do not intend to put any testimony or evidence on but
14 rather to argue the merits of the -- the likelihood of success
15 on the merits in the standard four-part test that has been set
16 forth in various papers. We would submit that Your Honor can
17 consider his ruling and make a more narrow determination here
18 such that we don't really need to get into the need for a stay
19 pending appeal and perhaps the closings can take place and the
20 plan can go forward provided that we have some relief.

21 Again, you know, we're not looking to upset the
22 entire plan or the entire confirmation order necessarily, but
23 rather that we've got a narrow issue, and quite frankly, Your
24 Honor, we don't really understand why this issue came up at
25 such a late time and why the credit bid purchaser never even

1 cared about this issue.

2 But, you know, it is an important issue for the
3 sureties, and we're hoping to prevail upon Your Honor that if
4 you'd reconsider the arguments and take a look at some of the
5 arguments I'm going to make and were in our papers
6 specifically with respect to assumption and time with respect
7 to 365 with what that means (indiscernible), you know. And
8 then ultimately arguing under 363(s) and that these are not
9 claims that can be sold free and clear, these are not
10 interests of the Debtor. These are future potential claims
11 against a third party, not the Debtor.

12 So anyway, to answer your question, I think we would
13 ask the Court to reconsider that portion of the confirmation
14 order and to not allow the sale to the credit bid purchaser
15 free and clear of the subrogation rights. We don't think that
16 these issues were really consideration, we don't -- they're
17 requiring them under the credit bid purchase agreement, or
18 under a related Disclosure Statement, or in the plan, or
19 anywhere here.

20 I mean these really came up at the 11th hour and we
21 don't believe that the credit bid purchaser would not have
22 done this deal or was looking to not do a deal, because it
23 was -- you know, had some important -- you know, it needs
24 obtain these leases free and clear of surety subrogation
25 rights. Again, this came out of -- you know, from what I

1 understand, this issue really only arose a couple of days
2 before the confirmation hearing.

3 And we don't think it's a condition. There's a
4 whole parade of horrors that the Debtors set forth in their
5 papers that were filed just, you know, in the past hour or
6 two, and, you know, we don't think that that's, you know,
7 that's really something that's going to happen here. And I'd
8 be prepared to argue why, you know, (indiscernible) under 363
9 there should be no sale free and clear of subrogation rights.
10 That's not something that was ever really contemplated or was
11 very important and integral to the deal.

12 I mean the Debtors are trying to argue that this all
13 inter-related, the entire case is going to fall apart. We
14 don't think that's the case. I don't know, quite frankly, why
15 the credit bid purchaser even cares about the subrogation
16 rights. They only arise if the credit bid purchaser doesn't
17 perform. And the credit bid purchaser was paying a billion
18 dollars for assets with liabilities that they agree to assume
19 on \$350 million. I mean we can obviously have significant
20 value.

21 So to try to, you know, create an issue that, you
22 know, if you want a stay pending appeal, you've got to post
23 some, you know, new bonds because we have a billion dollars
24 damages. You know, there are no damages today. There'll
25 probably be no damages ever. I mean if there were any

1 damages, it would be directly attributable to the credit bid
2 purchaser's failure to perform as the primary obligor on
3 leases that it has assumed.

4 So I think that I'd really, you know, ask the Court
5 to consider 365 arguments and then go into the 363(s)
6 arguments, because at the end of the day I think really I'm
7 having a difficult time understanding, you know, why the
8 credit bid purchaser cares and what it is that it's trying to
9 protect, and how Your Honor respectfully had the authority to
10 allow a sale to the credit bid purchaser free and clear of the
11 surety subrogation rights. These are not claims against the
12 Debtor.

13 THE COURT: So, Mr. Zuber, I've been trying not to
14 interrupt you, but I really wish you would answer the question
15 I asked. You're making a substantive argument and I wanted to
16 know what we're going to cover today. I think you've told me
17 you want to cover reconsider of the stay, you -- I'm asking do
18 you want to put on evidence, are we also going to take up the
19 amount of any bond if that's where we go? What is it that you
20 hope to cover today, not the substantive arguments which I'm
21 not going to make you repeat it --

22 MR. ZUBER: We would like --

23 THE COURT: -- but I think you need to take --

24 MR. ZUBER: -- we'd like --

25 THE COURT: -- that into account when we get there.

1 But I want to start by getting a roadmap for what we're doing
2 that the parties are agreed on.

3 MR. ZUBER: Well, I would like to argue
4 reconsideration, a more narrow form of relief. If the Court
5 is not inclined to modify the confirmation order in a more
6 narrow way, then we would ask for a stay pending appeal. And
7 then if Your Honor is inclined to grant the stay pending
8 appeal, we would ask for some time to discuss with our clients
9 as an appropriate position on a bond. We don't think any bond
10 should be required, but if Your Honor's going to require a
11 bond, we'd like the opportunity to discuss that with our
12 clients because we have not had an opportunity to do so in any
13 meaningful way.

14 So we would ask that you hear argument on
15 reconsideration, argument in favor of the stay pending appeal,
16 and if Your Honor's inclined to --

17 THE COURT: So, Mr. Zuber --

18 MR. ZUBER: -- require --

19 THE COURT: -- if that's where we go, it seems to
20 me that when -- and what I normally do when I balance the four
21 factors is one of the factors with respect to harm to others
22 is generally offset for lack of a better word by the amount of
23 the bond that would be proposed to be put up.

24 So the argument that they made in their response
25 that was filed earlier today was that the whole deal crashes

1 and therefore the bond should be equal to the whole deal. If
2 you put up a bond for the whole deal, then it seems to me that
3 the harm to them is minimal. And if you don't, then that's a
4 different issue, and I'm trying to understand how you can
5 proceed on the four factors without me knowing the amount of
6 the bond.

7 MR. ZUBER: Your Honor, I don't think there should
8 be any bond here. I don't think there's any problem, I don't
9 think the credit bid purchaser -- I don't think any of the
10 parade of horrors will occur, I don't think a bond should
11 have to be posted, I don't -- I think we can --

12 THE COURT: So do you want to take up the amount --

13 MR. ZUBER: -- run through --

14 THE COURT: -- of the bond today, or are you asking
15 that we do that on another day if you win your motion for
16 stay?

17 MR. ZUBER: Yes, Your Honor, I would respectfully
18 ask that if we win our motion for stay, that we get -- have a
19 short opportunity to come back tomorrow, or when Your Honor's
20 calendar permits it, to argue the amount of the bond, whether
21 our clients are prepared to post a bond --

22 THE COURT: All right.

23 MR. ZUBER: -- in an equal amount.

24 THE COURT: Mr. Perez, what do you think we're doing
25 today?

1 MR. PEREZ: Your Honor, I thought we were here to
2 argue their substantive motion which includes, you know,
3 basically reconsideration, asking you to vacate the
4 confirmation order, which is what that is, number one. Number
5 two, the stay pending appeal, and then number three, you know,
6 we have Mr. Dane, he submitted a declaration, he's available
7 to testify as to what the amount of the bond should be, in
8 essence what our -- what we would lose if -- not only if it's
9 stayed but -- during the interim, but also if we're not able
10 to go forward with this plan, which we think is very, very,
11 very substantial. And we're prepared to go forward on all
12 three of those, Your Honor.

13 THE COURT: All right. Let me hear from anyone else
14 that wants to pitch in on what we're doing today. If so,
15 please press five star one time on your line.

16 (Pause in the proceedings.)

17 THE COURT: Mr. Woodard, good afternoon.

18 MR. WOODARD: Good afternoon, Your Honor. This is
19 Lee Woodard. We filed our joinder along with Mr. Zuber's
20 papers as well. I guess I -- my thought was that the stay
21 doesn't necessarily have to be in a totality of the
22 circumstances. In other words, I don't see that -- I think
23 Your Honor has the ability to be able to issue a limited stay
24 that would address the concerns of the sureties without
25 cratering the entire plan or any of the other horrible things,

1 that the Debtors certainly correctly pointed out that if
2 everything cratered, all of those bad things could happen.

3 They were very careful throughout their discussion
4 to limit their comments to what could happen, or if it were to
5 happen, or always in the conjunctive of not necessarily
6 happening. And I think that's much more realistic --

7 THE COURT: Well, yeah, that means you wouldn't have
8 to pay on the bond if it didn't happen. The question is, the
9 bond should protect them against the possibilities of what
10 might go wrong. You only have to pay on a bond if those
11 possibilities happen. Right? But I've got to worry about the
12 possibilities.

13 MR. WOODARD: Judge, I'm sorry, that wasn't what I
14 was talking about what may not happen. I'm saying the whole
15 purpose of this issue is what I've been trying to figure out
16 for all of these weeks is does the credit bid purchaser really
17 take the position that it will not close if these future
18 suretyship rights are still in existence. I have never seen
19 an answer to that. There's been no testimony to it, the
20 credit bid purchaser hasn't testified.

21 There are lots of allegations of what could happen
22 if that were to take place. I totally agree there's a lot of
23 bad things that could happen if that's the case. This is --
24 this discussion should be limited only to those few issues
25 that arise out of the loss of the future suretyship rights.

1 THE COURT: Yeah, but let's assume that I were to
2 stay that one part of the order and then everyone said, We're
3 not going to close. If that happened, then according to
4 Mr. Dane's affidavit, or declaration, there's a billion
5 dollars worth of damages. Right? I understand you're telling
6 me that isn't going to happen. But don't you have to put up
7 the bond and then when it doesn't happen, you don't have to
8 pay on it? Isn't that what I'm supposed to figure out?

9 And do you want to put on somebody from the
10 purchaser, because I don't know that we have to do this today.
11 And if evidence is needed -- let me back up. I'm taking this
12 motion really seriously. I'm going to take the
13 reconsideration seriously, I'm going to take the motion for
14 stay seriously. If you're telling me that you want to put up
15 the purchaser as part of your motion for stay, let me hear
16 that, and I want to hear from others as to whether you're
17 entitled to evidence at that point, but I don't know why you
18 wouldn't be, and we'll put them up.

19 But if you just want me to guess, then I've already
20 said that I think the evidence shows that. I know you all
21 don't think it does, but I think you're wrong about that. But
22 I think it shows there isn't a purchaser that's going to buy
23 and do better than what the current offer is. And so if you
24 think that you want evidence on, I don't think I'm going to
25 want to stand in the way of that. And maybe somebody can give

1 me some case law that says I have to; that's a different
2 issue.

3 But do you want some evidence today or do you want
4 to just argue? It sounds like Mr. Zuber just wants to argue,
5 and that's okay. But if you're just going to argue, then
6 you're going to have to convince me I looked at the evidence
7 wrong I think, not that the evidence is wrong. And however
8 you all want to -- I just want to know what you want to do.
9 If you're telling me no evidence on your motion for
10 reconsideration or for stay, okay.

11 MR. WOODARD: I think what I was arguing, Your
12 Honor, although we can certainly discuss such a thing amongst
13 the sureties, I think those arguments was is that there hadn't
14 been any evidence of it put forth already.

15 THE COURT: I think that is incorrect, and I think
16 you know I think that's incorrect. But if you want to merely
17 argue that the evidence doesn't support this in your motion
18 for reconsideration and motion for stay, that's fine. If you
19 want to tell me that you want to introduce evidence that shows
20 my conclusion based on the circumstances that I've heard and
21 the facts I've heard that my conclusion is just wrong, tell me
22 you want to put on some more evidence.

23 But it -- I want you all to put on the case you want
24 to put on so that I can take this seriously, but I'm not going
25 to give you sequential bites at the apple. Right?

1 MR. WOODARD: I understand, Your Honor. And
2 unfortunately at this point I can't tell you that we are
3 prepared because we didn't subpoena anyone from the credit
4 purchaser to be able to solicit that testimony today. We were
5 all under the impression we were just going to argue the
6 motion and -- so I have to admit that we are not prepared to
7 call a witness --

8 THE COURT: Do you want more --

9 MR. WOODARD: -- today.

10 THE COURT: Well, you all asked me for an emergency
11 hearing, I gave you an emergency hearing. Do you want more
12 time? I can, you know, come back in a couple of days. I am
13 to looking to push something through if I've got it wrong.

14 MR. ZUBER: Your Honor, my concern obviously is
15 Section 363 and, you know, we don't know as a matter of law.
16 There appears to be a split in the Circuits, but we are
17 concerned that if we don't get a stay pending appeal that our
18 appellate rights will be foreclosed. And, you know, having a
19 bond of a huge magnitude should not be able to foreclose our
20 rights. So I think that as Mr. Woodard argued, and I would
21 agree, that --

22 THE COURT: Mr. Zuber, in all fairness, your clients
23 are in the business of putting up future bonds. I'm not --
24 I'm going to set the bond in the amount of economic damages
25 and if your clients don't want to take that risk, that's their

1 issue. I'm not going to worry about that. I mean they can
2 put up a big bond if that's what's required.

3 MR. ZUBER: But I -- understood, Your Honor, but I
4 think that the bond can be limited to the narrow issue of
5 selling free and clear of these subrogation rights. It's
6 (indiscernible) close. I mean --

7 THE COURT: Right. Right, but --

8 MR. ZUBER: -- these are rights that --

9 THE COURT: -- no, but if they won't close, that's
10 where the damage is. You're assuming they're going to close.
11 I have to assume they don't.

12 MR. ZUBER: There's no -- there's no -- well,
13 there's no evidence in the Record where anybody testified that
14 nobody would close. I mean this issue, in my view, came up at
15 the 11th hour.

16 THE COURT: Would you like --

17 MR. ZUBER: I mean two days before the hearing.

18 THE COURT: -- would you like to introduce some
19 evidence as to whether or not they would close?

20 MR. ZUBER: No, but I can introduce evidence that
21 the Disclosure Statement, the plan, the credit bid purchase
22 agreement and the DIP credit facility and the exit financing,
23 none of them are contingent upon this sale being free and
24 clear of subrogation rights. This issue came up at the 11th
25 hour and it --

1 THE COURT: There's -- my understanding --

2 MR. ZUBER: -- and quite frankly --

3 THE COURT: -- is they were subject -- that it was
4 a total free and clear sale and the question of subrogation
5 rights was brought up by you, that you wanted to be sure free
6 and clear didn't mean free and clear of your subrogation
7 rights. And I said, Yes, it does. Free and clear is free and
8 clear.

9 So I don't want to -- I believe that that is a
10 requirement. If you believe that selling something free and
11 clear is not a requirement, I'll let you show me that. I
12 think we're arguing over whether free and clear includes
13 subrogation rights or not, an issue that you all raised, not
14 them.

15 MR. ZUBER: Well, but, you know, they never said --
16 I mean the documents say free and clear and they track in line
17 with 363(f).

18 THE COURT: Right.

19 MR. ZUBER: We never viewed free of liens, claims
20 and encumbrances as applying to subrogation rights. These are
21 not claims against the Debtor. I'll argue that
22 (indiscernible).

23 THE COURT: Why did you bring it up then? It's the
24 way I read it.

25 MR. ZUBER: Because two days before the -- because

1 two days before the hearing the Debtor filed an amended plan
2 in which they said, For the avoidance of doubt, the sale is
3 free and clear of all subrogation rights. And what is this?

4 THE COURT: Well, you had --

5 MR. ZUBER: Where did this come from?

6 THE COURT: -- you had brought up --

7 MR. ZUBER: That was not --

8 THE COURT: -- you had brought up subrogation
9 before they did that I believe, Mr. Zuber. Am I wrong about
10 that? You had brought up --

11 MR. ZUBER: Respectfully, Your Honor --

12 THE COURT: -- that you wanted --

13 MR. ZUBER: -- I don't think that --

14 THE COURT: -- to be sure that you preserved all
15 your subrogation rights. And they were being up front in
16 saying --

17 MR. ZUBER: Right, because two --

18 THE COURT: -- no, you're not.

19 MR. ZUBER: Yes, because two days before the hearing
20 it became an issue when they amended Section 5.13 of the plan.
21 That was not in there two days before they amended it. And
22 they amended, then we said, Whoa.

23 THE COURT: So you think that --

24 MR. ZUBER: Yeah, I can --

25 THE COURT: -- you can show me a contract that says

1 it sold free and clear, and I should read that as saying it's
2 sold free and clear of everything other than subrogation
3 rights. And you're going to win on that basis?

4 MR. ZUBER: It has to be -- I think that it has to
5 be free and clear of an interest of the Debtor and property.
6 There isn't -- subrogation rights are not an interest -- we
7 have no interest in any property of the Debtor. These are
8 rights against a third party, non-Debtor purchaser who assumed
9 valuable leases by paying significant dollars, you know, they
10 paid a billion dollars and they assumed \$350 million in
11 liabilities for P&A.

12 And if they their P&A as they're obligated to do,
13 and that they've admitted they must do, these subrogation
14 rights never come into existence. They don't exist. It's
15 irrelevant. The only time our subrogation rights will arise
16 against a non-Debtor assignee of leases which has an
17 obligation to perform going forward, is if that primary
18 obligor does not perform. And if they don't perform because
19 they're insolvent, then what do they care. Our subrogation
20 rights have no value.

21 THE COURT: So I want to back up --

22 MR. ZUBER: They don't perform --

23 THE COURT: -- I want to back up. You were quoting
24 363(f) and I think you quoted it by inserting some additional
25 words. So let's get a real quote of 363(f).

1 MR. ZUBER: All right. Your Honor, the Trustee may
2 sell property under Section (b) or (c) of this section free
3 and clear of any interest in such property of an entity other
4 than the estate, only if --

5 THE COURT: Right. And you said free and clear
6 of --

7 MR. ZUBER: You're talking --

8 THE COURT: -- the estate's interest in such
9 property. That's not what it says. It's free and clear of
10 any interest by anybody in the property.

11 MR. ZUBER: Yeah, but in what property? This is --

12 THE COURT: The property being sold.

13 MR. ZUBER: I think it's *in rem* right and we're
14 talking about *in personam* rights against the credit bid
15 purchaser. We cited case law to this effect, Your Honor, it's
16 in our papers.

17 THE COURT: I got it.

18 MR. ZUBER: And I'll take the --

19 THE COURT: I know that.

20 MR. ZUBER: -- (indiscernible).

21 THE COURT: Okay. So are you all going to proceed
22 with or without evidence today? What do you want to do? And
23 again, if you want to come back for a day when you can have
24 evidence, I don't want to stand in the way of that. I just
25 need a decision as to how we're going to litigate this.

1 MR. ZUBER: I would prefer to just make our legal
2 arguments. I think the Record is sufficient and the arguments
3 which (indiscernible) I think that we can make without any --

4 THE COURT: And on the bond are you going to want
5 evidence on the bond, or no evidence on the bond?

6 MR. ZUBER: No evidence, Your Honor.

7 THE COURT: All right.

8 MR. ZUBER: I mean I would just like an
9 opportunity -- well, I would like an opportunity obviously, if
10 Your Honor's going to grant the stay and will require that we
11 post a bond, that we have an opportunity obviously to go to
12 our client to discuss that.

13 THE COURT: No, look, if there isn't going to be any
14 evidence on it, I'm going to decide on what evidence I have.

15 So, Mr. Woodard, what do you want to do?

16 MR. WOODARD: Your Honor, we are joinders, so I will
17 go along with Mr. Zuber.

18 THE COURT: All right. And we have another joinder
19 as well from Mr. Leo. Do you all want to proceed without
20 evidence? Hold on, I'm going to get your line active. I'll
21 find you. All right. Mr. Leo, go ahead, please.

22 MR. LEO: Yes, Your Honor, I will proceed as
23 Mr. Zuber has outlined on behalf of North American Specialty.

24 THE COURT: And do you want to proceed without
25 evidence as well?

1 MR. LEO: I do, Your Honor.

2 THE COURT: All right. And the Debtors, the only
3 evidence -- what evidence are the Debtors going to introduce
4 then, Mr. Perez, assuming they are having none, they rest on
5 their evidentiary record, what evidence are you all going to
6 have today? You said you're prepared.

7 MR. PEREZ: Yes, Your Honor. So we would request
8 that the declaration of Mr. Dane be admitted into evidence,
9 and then we would have some very, very short direct of
10 Mr. Dane.

11 THE COURT: All right. Any objection to the
12 admission of 1806?

13 MR. LEO: I can't (indiscernible) opportunity to get
14 through the papers, so we'll just cross-examine Mr. Dane as
15 appropriate.

16 THE COURT: I'm not going to rush you through the
17 hearing. If you want a moment to read it before you decide
18 whether you're going to object, take a moment.

19 MR. LEO: Thank you.

20 (Pause in the proceedings.)

21 MR. LEO: Your Honor, I'm not going to object to the
22 admission of the Dane declaration as long as I have an
23 opportunity to ask Mr. Dane questions.

24 THE COURT: All right. 1806 is admitted.

25 (Debtor's Exhibit No. 1806 received in evidence.)

1 THE COURT: Mr. Dane, would you raise your hand,
2 please, sir? You're right, I've got to get your line active.
3 Hold on.

4 (Witness sworn.)

5 THE COURT: Thank you.

6 Mr. Perez, I want you to finish whatever direct you
7 have in addition to the declaration and then we'll do the
8 cross.

9 MR. PEREZ: Yes, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. PEREZ:

12 Q Mr. Dane, would please state your name for the Record?

13 A It's Michael Dane.

14 Q All right. Did you have an opportunity to review and
15 get -- in connection with the preparation of your declaration?

16 A I did.

17 Q Do you have an opinion as to what will happen if the
18 confirmation were stayed for a period of time?

19 A Yes, I do.

20 Q Okay. And what is that opinion, sir?

21 A I think there's significant risk to the overall viability
22 of our plan. This plan has been over a year in the making,
23 it's required a significant amount of consensual support from
24 a wide range of stakeholders that includes the government, a
25 number of predecessors, a surety company, hundreds of vendors,

1 amongst other stakeholders in this process, managing all those
2 stakeholders and the significant consensus that we've been
3 able to achieve.

4 It's been a significant task and we're really at the
5 doorstep of completing this process and being able to
6 accomplish all the important goals that were a part of this
7 restructuring starting with addressing comprehensively the
8 decommissioning liabilities that are associated with Fieldwood
9 today. I think if this plan were to not close timely, I think
10 that it significantly jeopardizes all of those important goals
11 of the process.

12 Q All right. And do you -- and are there significant costs
13 associated just with the delay of the closing?

14 A Yes, there are.

15 Q And could you tell the Court what some of those costs
16 are?

17 A Well, clearly being involved in this process in general
18 is a very expensive proposition. We have millions of dollars
19 a month, generally between 5- to \$10 million a month of
20 process related costs associated with the restructuring in
21 terms of advisor and professional fees. We have a very
22 significant cost associated with maintaining this entire asset
23 base, the restructuring contemplates a variety of entities
24 which are necessary in order to conduct the decommissioning,
25 but also to pay for the ongoing operations and maintenance of

1 the asset base. That's one of the reasons that we're needing
2 to conduct this restructuring.

3 The total cost of managing this business, just in
4 terms of operating expenses and maintenance expenses is around
5 \$40 million a month associated with all of our assets today.
6 The vast, vast majority of that amount is associated with
7 properties that are not going to be a part of the credit bid
8 purchaser.

9 In addition to that, we spend money outside of
10 operating expenses each month on things like capital expenses,
11 on other G&A which is going to be significantly reduced after
12 we enter into some of these arrangements, and there's cost
13 sharing that's going to take place. There's P&A expenses that
14 the company conducts now that others are going to be
15 responsible for post-effective date.

16 All of those things add up to in some months tens of
17 millions of dollars a month as well. So the ongoing cost
18 until we exit is tens of millions of dollars a month amongst
19 all of those factors.

20 Q All right. Now let me just switch topics just for one
21 minute. Have you ever had any discussion -- did the credit
22 bid purchaser ever express a desire to purchase the asset in
23 connection with a 363 sale?

24 A Yes.

25 Q And was -- is the free and clear aspect of a 363 sale one

1 of the things that they expressed an interest in?

2 A I think that in our discussions and my understanding of
3 the credit bid purchaser's expectations, purchasing these
4 assets free and clear was paramount to their consideration of
5 how they would be willing to proceed with purchasing these
6 assets and contributing capital for all purposes of the plan.

7 Q And how much capital is the credit bid purchaser
8 contributing?

9 A The direct new money that's being contributed under the
10 plan is \$225 million in addition to a host of other retained
11 obligations.

12 Q And how much are the retained obligations?

13 A The retained obligations take many different forms.
14 There is the working capital that the credit bid purchaser is
15 going to be -- continue to be responsible for. That working
16 capital is I would estimate somewhere between 50- to \$70
17 million at least of working capital that comprises Fieldwood
18 payables today that the credit bid purchaser will support
19 post-effective date.

20 There's also a number of contributions that is being
21 made pursuant to the plan. The new money that's coming in is
22 going to be used to fund significant P&A for the Fieldwood 3
23 assets. It's also going to satisfy all of the various amounts
24 that are owed under the predecessor arrangements at exit. We
25 had estimated in our confirmation hearing that there was

1 nearly \$170 million of exit costs associated with various
2 claims associated with professional fees associated with exit
3 costs under these arrangements.

4 Q All right. And do you believe that the Court can make
5 one change to the confirmation order and not upset the entire
6 confirmation?

7 A My understanding of the importance of the free and clear
8 language like I mentioned was that this was very paramount to
9 our lenders, to any buyer of these assets, the risk that not
10 acquiring these assets free and clear, particularly given the
11 restructuring that we've been going through, is something that
12 I think would cause great pause and concern and that's the
13 reason that it was specifically identified in our plan,
14 particularly given the comments of the sureties throughout
15 this process.

16 Q Mr. Dane, with respect to the amounts that are being
17 assumed by credit bid purchaser, are any of those amounts
18 related to assets other than the assets that are being
19 purchased? I'm sorry, (indiscernible)?

20 A Yes, with respect to the -- the working capital is
21 associated with all of Fieldwood's working capital today
22 irrespective of the assets that are going to be going to
23 Newco.

24 Q All right.

25 MR. PEREZ: Nothing further, Your Honor.

1 THE COURT: Thank you. Is there any party that
2 opposes a stay pending on appeal that has any additional
3 direct testimony from Mr. Dane? If so, please press five star
4 one time on your phone.

5 (No audible response.)

6 THE COURT: All right. Mr. Zuber.

7 MR. ZUBER: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. ZUBER:

10 Q Mr. Dane, the purchase price here in excess of
11 \$1 billion. Correct?

12 A That's correct.

13 Q And the assumed liabilities for P&A is approximately \$350
14 million. Correct?

15 A Yes, that's Fieldwood's estimate for the P&A associated
16 with the credit bid purchased assets.

17 Q So would you agree then that buying -- paying a billion
18 dollars for these assets and assuming \$350 million in P&A,
19 that the credit bid purchaser believes that these assets have
20 cumulative value?

21 A Yes, I think that -- I think that the assets certainly
22 have value in excess of the liabilities and that's the reason
23 why they are a part of the credit bid purchased assets.

24 Q Why would the credit bid purchaser care about a surety's
25 future subrogation rights?

1 MR. PEREZ: Objection, Your Honor, calls for
2 speculation.

3 THE COURT: Mr. Zuber?

4 MR. ZUBER: Your Honor, he's raised -- he's raised
5 the doubt about, you know, that the subrogation -- free and
6 clear subrogation rights was a paramount important
7 consideration for the sale. I want to understand why.

8 THE COURT: Given that the questions were asked, I
9 think this is a reasonable follow-up. I was surprised that
10 the other testimony wasn't objected to, but since it came in
11 I'm going to let the -- basically the hearsay cross-
12 examination come in as well.

13 You can answer, Mr. Dane.

14 THE WITNESS: So, Mr. Zuber, I think I said that
15 it -- the concept in general of buying the assets free and
16 clear of all liens, claims, encumbrances was what was of
17 paramount importance, including any claims that could come by
18 subrogation. I think that we certainly don't intend to
19 default on these assets.

20 The purchase of credit bid purchaser is that it's an
21 entity that the stakeholders that, particularly the ones that
22 are investing new money into that business, believe is going
23 to be an attractive investment, otherwise they wouldn't be
24 making the investment that they are and supporting the plan in
25 the way that they are. But the unknowns of what claims may

1 come against them by buying these assets, even if they don't
2 intend to default, is important for them to understand that
3 they're buying them free of all of those potential
4 circumstances.

5 I think it's the exact fact that there is an unknown
6 circumstance that could develop that may give rise to someone
7 potentially being able to assert a claim, and that claim may
8 be disputed. There may not be, in the credit bid purchaser's
9 opinion, a valid subrogation claim. But if that claim is just
10 being made against it, and that party has that right to make a
11 claim, that's introducing significantly more risk than what
12 the expectation of a buyer that's buying assets free and clear
13 of all liens, claims, encumbrances would be expecting.

14 BY MR. ZUBER:

15 Q Would you agree, Mr. Dane, that once this closing takes
16 place and the credit bid purchaser becomes the lessee of these
17 leases that it's primarily liable for all decommissioning
18 obligations that are up under BOEM regulations?

19 A It's liable to the extent of that liability under the
20 lease and it would be joint and severally liable with any
21 other lease holder that is in the chain of title in that
22 lease. It's certainly -- a credit bid purchaser --

23 Q But wouldn't it be primarily liable ahead of other
24 predecessors and surety bond providers for a predecessor?

25 MR. PEREZ: Objection, Your Honor, calls for a legal

1 conclusion. I think he's answered the question.

2 THE COURT: Sustained.

3 BY MR. ZUBER:

4 Q So, Mr. Dane, is there anything in the credit bid
5 purchase agreement that says the credit bid purchase is
6 contingent upon a sale free and clear of a surety's future
7 subrogation rights?

8 A As I understand how the parties understand subrogation
9 rights, I believe that they put that into the bucket of free
10 and clear. I don't -- I'm not aware if subrogation is
11 explicitly mentioned as something that is a part of liens,
12 claims, encumbrances, but I -- and my understanding is that
13 that falls within those categories, and I believe that's how
14 the stakeholders interpret it.

15 Q So the answer is you're not aware of anything
16 specifically in the credit bid purchase agreement that says
17 the sale must be free and clear of future subrogation rights
18 of the Debtors' pre-petition sureties. Correct?

19 MR. PEREZ: Objection --

20 THE COURT: Sustained.

21 MR. PEREZ: -- to the form of the question.

22 THE COURT: Sustained.

23 BY MR. ZUBER:

24 Q Is there anything in the credit bid purchase agreement to
25 your knowledge that says the sale must be free and clear of

1 surety subrogation rights?

2 MR. PEREZ: Objection, Your Honor, asked and
3 answered.

4 THE COURT: Sustained.

5 BY MR. ZUBER:

6 Q Is there anything in the exit financing facility that
7 says that the exit financing will only be provided if the sale
8 is free and clear of surety subrogation rights?

9 A It's an order of the plan, I believe that the parties
10 understand the free and clear language to be inclusive of
11 potential claims like subrogation. I don't think that until
12 the sureties raised trying to preserve these rights that folks
13 thought it was necessary to explicitly call it out and that's
14 why it was contained within broader free and clear language.

15 So I think the free and clear of liens, claims and
16 encumbrances is thought by the parties to include things like
17 subrogation rights. But it was viewed as prudent to expand
18 upon that given the evolution of the arguments that were being
19 made and in order to be clear.

20 Q Is there anything -- any of the DIP financing motions or
21 orders that say that the DIP financing will only be provided
22 if the sale is free and clear of surety subrogation rights?

23 MR. PEREZ: Objection, Your Honor, asked and
24 answered.

25 THE COURT: Sustained.

1 BY MR. ZUBER:

2 Q Mr. Dane, what's your understanding of when any surety
3 subrogation rights would arise, when would that happen?

4 MR. PEREZ: Your Honor, I'm going to object to the
5 extent it calls for a legal conclusion. It's an improper
6 question. If he's asking for his layman's opinion of that,
7 Your Honor, I think it's irrelevant.

8 THE COURT: Mr. Zuber?

9 MR. ZUBER: Your Honor, it's not irrelevant. He's
10 testifying that he viewed the sale free and clear to include
11 subrogation rights, although it was never expressly stated. I
12 want to know what his understanding of when a subrogation
13 right would arise because he's saying it was very important,
14 it was paramount that the sale take place free and clear of
15 subrogation rights. I want his understanding of when such
16 subrogation rights arose or may rise.

17 THE COURT: Yeah, and I do understand that's what
18 you're asking, but Mr. Perez's objection was a little narrower
19 than that. I want to get your answer to it. But if you're
20 not asking for a legal conclusion as to when they arise, why
21 does his personal view of it matter as to what we ought to be
22 doing?

23 MR. ZUBER: Well, you know, he's going to be the CEO
24 of the credit bid purchaser, I'd like his understanding of why
25 it's so important that the sale take place free and clear of

1 my client's subrogation rights and when he believes those
2 rights exist. If he believes those rights exist now than to
3 believe those rights exist some time in the future --

4 THE COURT: So you just told me --

5 MR. ZUBER: -- I want his understanding --

6 THE COURT: -- what you want to understand, I'm
7 asking you why is what you want to understand relevant to the
8 decision that I need to make?

9 MR. ZUBER: I'll move on, Your Honor.

10 THE COURT: Thank you.

11 BY MR. ZUBER:

12 Q Mr. Dane, there was some discussion on direct about the
13 assets that are being acquired. Those assets include many
14 lease hold interests. Is that correct?

15 A I'm sorry, I couldn't hear all the words. Do you mind --
16 those assets include what?

17 Q They include many lease hold interests. Correct?

18 A Yes.

19 Q And isn't it true that most, if not all, except for maybe
20 some working capital of the assets being acquired, all are
21 related to and integral to the oil and gas operations?

22 MR. PEREZ: I'm going to object to the question,
23 Your Honor, as vague.

24 THE COURT: Overruled.

25 THE WITNESS: Yeah, I'm not sure I understood your

1 question, but the assets that are comprised -- that are going
2 to comprise the credit bid purchaser are various assets that
3 are going to form the basis of the credit bid purchase
4 business. It's a number of properties, they're all
5 (indiscernible) because they complement the business.

6 BY MR. ZUBER:

7 Q But they all relate largely to the oil and gas leases
8 being acquired, don't they?

9 A I don't know, I'm not sure I appreciate the distinction.
10 What, the assets related to the leases? Is that your
11 question?

12 Q Yes. Did it include -- that the assets include oil and
13 gas leases. Correct?

14 A Yes.

15 Q And rights-of-way, easements, service leases, subsurface
16 agreements and similar rights and agreements related to or
17 held for use in connection with the various leases?

18 A Many of the assets have those types of oil and gas
19 interests that were acquired are subject to various leases,
20 those leases have associated agreements like, in certain cases
21 like what you describe, but not in all.

22 Q And they're also acquiring wells operated in conjunction
23 with these leases?

24 A In some cases, yes.

25 Q And equipment, machinery, structures, fixtures, and other

1 things that are all used in connection with these leases.

2 Correct?

3 A In general the assets the credit bid purchaser is
4 acquiring has those types of assets, not every lease has those
5 assets that you described.

6 Q But when you're paying -- when the credit bid purchaser
7 is paying over a billion dollars for these assets, isn't that
8 largely comprised of the leases and related rights and
9 interests?

10 A The consideration is in respect of the value of the oil
11 and gas properties. And the business.

12 Q And you will be the CEO of the credit bid purchaser once
13 this deal -- sale closes. Is that correct?

14 A My discussions with the lenders contemplate that that's
15 the position that I'm going to have with the credit bid
16 purchaser.

17 MR. ZUBER: Your Honor, if I may just have a minute
18 or so, I'd appreciate it. It's just --

19 THE COURT: Sure.

20 MR. ZUBER: -- I want to make sure if I have any
21 other questions.

22 THE COURT: Of course.

23 (Pause in the proceedings.)

24 BY MR. ZUBER:

25 Q Mr. Dane, the leases that the credit bid purchaser is

1 acquiring, these are all leases that are not being abandoned
2 or sought to be abandoned. Correct?

3 A Right. They're being acquired so they're not being
4 abandoned.

5 Q Right. So the are good and valuable leases, not leases
6 that the Debtor is seeking to abandon. Correct?

7 A They are not leases that the Debtor has abandoned.

8 (Pause in the proceedings.)

9 BY MR. ZUBER:

10 Q I know you're not a lawyer but, and I think I've asked
11 this several times but is it your understanding that surety
12 subrogation rights would arise only upon the surety paying --
13 making a payment or performing under a bond?

14 MR. PEREZ: Same objection, Your Honor.

15 THE COURT: Same ruling.

16 MR. ZUBER: All right. Nothing further. Thank you,
17 Mr. Dane.

18 Thank you, Your Honor.

19 THE COURT: Thank you.

20 Mr. Woodard?

21 MR. ZUBER: Your Honor, I'm sorry, before I forget,
22 can I move into evidence our exhibits, they're at Document
23 1807-1, Exhibits 1 through 6.

24 THE COURT: Any objection to 1807-1 through 6?

25 MR. PEREZ: No, Your Honor.

1 THE COURT: 1807-1 through 6 are admitted.

2 (Movant's Exhibit Nos. 1807-1 through -6 received in
3 evidence.)

4 THE COURT: Mr. Woodard.

5 MR. WOODARD: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. WOODARD:

8 Q Good afternoon still, Mr. Dane. I just have a very few
9 questions for you. You had testified under Mr. Perez's Direct
10 that your opinion was that a stay of the plan would have dire
11 consequences. My question is, would your opinion change if
12 the stay were limited to just future suretyship rights rather
13 than the entire plan?

14 A The lenders would need to make a determination if they
15 are prepared to close on this plan, if they're prepared to
16 move forward with this uncertainty, that's -- I'd be
17 speculating if I was speaking on their behalf. I do know that
18 in all the conversations that we've had with them to date and
19 in developing the plan and the various considerations of the
20 plan, that the premise of the plan is that they're acquiring
21 these assets free and clear. So I think that that's a
22 significant consideration for those parties.

23 Q Okay. You were involved in the negotiation with the
24 purchase agreement with the credit bid purchaser. Right?

25 A Yes, I was.

1 Q At any time during the negotiations were there any
2 discussions over future suretyship rights?

3 MR. PEREZ: I'm going to object to the -- I'm going
4 to object to the form of the question, Your Honor, as vague.

5 THE COURT: Overruled.

6 THE WITNESS: I think there was a number of
7 conversations in general about the treatment of surety bonds
8 and how they were contemplated under the plan. That was, as
9 everyone is aware, this was a significant overall element of
10 the contested nature of our confirmation and various other
11 arguments that have come before the Court throughout the time
12 that we've been in Chapter 11. So generally speaking there
13 was a lot of dialogue with respect to how the parties
14 understood that the sureties were contemplated to be treated
15 under the plan.

16 BY MR. WOODARD:

17 Q Okay. And in any of those conversations did you learn
18 that the discussion concerned the obligations that would arise
19 owing by the credit bid purchaser under 30 CFR and the variety
20 of sections that it has, in the -- for the future obligations,
21 was there any discussions of that?

22 MR. PEREZ: Objection, Your Honor, vague.

23 THE COURT: Overruled.

24 THE WITNESS: I believe that the parties had a
25 consistent understanding of how they all thought that the

1 treatment of the surety bonds would be handled under the plan,
2 and I don't know that there was -- I don't recall speculation
3 on alternative outcomes. I think that the way that the plan
4 was approved was what was contemplated.

5 There was discussion going all the way back to
6 before the company filed bankruptcy about the legal treatment
7 of surety bonds, the view that these indemnity agreements were
8 pre-petition unsecured claims, how they would be treated
9 through the bankruptcy, that that was the parties' view of the
10 correct treatment. I don't think that there was direct
11 discussion or speculation that I can recall that contemplated
12 alternative outcomes to that.

13 BY MR. WOODARD:

14 Q Okay. And all of the obligations you're talking about
15 that were discussed were actually obligations of the Debtors
16 with the sureties. Is that correct?

17 A The Debtor is the principal on these bonds, the
18 obligations under the bonds as they existed -- or as they
19 exist, you know, relate to the Debtors. And I know that the
20 conversations that have been had with respect to credit bid
21 purchaser's obligations arose -- needs to be separated from
22 the Debtor's obligations under their bonds.

23 Q And the credit bid purchaser is aware, is it not, that
24 the execution of the assumption of the leases obligates that
25 entity directly with the government?

1 MR. PEREZ: Again, Your Honor, I think that's
2 calling for a legal conclusion.

3 THE COURT: Sustained.

4 MR. PEREZ: And I'm not sure that's actually
5 correct.

6 THE COURT: I'm sustaining it. It calls for a legal
7 conclusion the way the way the question was asked.

8 BY MR. WOODARD:

9 Q So was it not, Mr. Dane, that the Debtors' obligations to
10 the government was cut off by the free and clear language that
11 was discussed?

12 MR. PEREZ: Objection, Your Honor, I think it mis-
13 states the testimony.

14 THE COURT: Yeah, I don't even understand the
15 question, Mr. Woodard. Free and clear has nothing to do with
16 the Debtors' obligations, it has to do with acquirer's
17 obligations. So I don't know what the question means.

18 MR. WOODARD: Your Honor, I think that the testimony
19 was that the free and clear language had been discussed for
20 all the iterations of the plan.

21 THE COURT: Correct.

22 MR. WOODARD: And I believe you -- that the real
23 problem here is that the free and clear language that everyone
24 assumed was the case was regarding the Debtors' obligations.
25 As Mr. Dane just testified to the indemnity agreements and the

1 bonds themselves that that is what ultimately they believe
2 they were cutting off.

3 THE COURT: I misunderstood your question. Let me
4 get -- if you would just re-word it, I do understand what
5 you're asking now and I didn't understand it before. So if
6 you can just re-word it.

7 MR. WOODARD: Thank you, Your Honor.

8 BY MR. WOODARD:

9 Q Well, Mr. Dane, you just listened to my own testimony
10 apparently of what I was trying to get to. Wasn't it your
11 understanding that what was being cut off by the 363 sale and
12 the free and clear language was the obligation of the Debtors'
13 bonds and the indemnity agreements that ran to the Debtors?

14 MR. PEREZ: Your Honor, I'm going to object. I
15 don't -- I still don't understand the question. It's talking
16 about the discharge, but that's not what free and clear is.
17 And so it's like listing apples and oranges here, Your Honor.
18 I don't think it's a fair question.

19 THE COURT: So I do understand the clarification he
20 made, I'm going to see if Mr. Dane does.

21 Mr. Dane, if you can answer that question, I want
22 you to answer it.

23 THE WITNESS: I don't know what the -- what all the
24 parties that represent the credit bid purchaser contemplated
25 free and clear to include or exclude, but I think the concept

1 in general is intended to be very broad and it's intended to
2 ensure that the assets are acquired free and clear of any
3 claims whether they are -- originated directly or indirectly
4 as a result of the Debtor's pre-petition business.

5 BY MR. WOODARD:

6 Q Is there a date set at this point to close the
7 transaction and the sale to the credit bid purchaser?

8 A The goal is pending completing all the different
9 transactions that need to be completed as a part of this plan
10 pending various regulatory filings and administration that
11 needs to be completed that the closing would take place at the
12 end of this month.

13 MR. WOODARD: I don't have any further, Your Honor.
14 Thank you.

15 THE COURT: Thank you. Mr. Leo?

16 MR. LEO: Thank you, Your Honor. I have just a very
17 few questions.

18 CROSS-EXAMINATION

19 BY MR. LEO:

20 Q Mr. Dane, your -- the Debtors' counsel's filed a brief
21 objecting to the relief sought here, the stay. And you have
22 given the opinion that the stay will trap the plan. At Page
23 18 of that brief there's a statement that there is an
24 objective basis to dispute the validity of any subrogation
25 claim held by the sureties because the Debtors do not believe

1 that the sureties will ever have to pay out on their bond.

2 Do you agree with that?

3 MR. PEREZ: Objection, Your Honor, relevance.

4 MR. LEO: Well, I can tie it up with the fact that
5 Mr. Dane has been quoted at some June 21 hearing where
6 Mr. Dane states, I believe that these are very reasonable
7 projections, they're a very fair set of projections and very
8 much in line with all the reasonable assumptions that are
9 forecasted here.

10 BY MR. LEO:

11 Q So my question is, do you believe as stated in the brief,
12 that there is a very remote chance that there will be any
13 claim on the bonds?

14 A I believe that the credit bid purchaser believes that
15 it's going to have a very solid business and it certainly
16 doesn't intend to default on its obligations, and a default
17 seems like the most likely scenario that would result in a
18 party claiming subrogation rights, and because the credit bid
19 purchaser is certainly not intending to default upon its
20 obligations, that there would be certainly an expectation that
21 it wouldn't give rise to claims on bonds related to credit bid
22 purchased assets absent disputes or other circumstances that
23 may give a party a claim under the bonds.

24 Q And if, as you state, that a default is the event that
25 gives rise to the obligation to pay to the bond, and the

1 credit bid purchaser's chances of default are very remote,
2 then there's very likely very little harm from the stay that
3 relates only to the suretyship issue, is there?

4 MR. PEREZ: Objection, Your Honor, I think it's
5 calling for speculation. I mean the premise -- I object to
6 the premise of the question.

7 MR. LEO: His opinion was the stay will --

8 THE COURT: Now hold on. I'm going to -- I'm
9 overruling the objection. The question isn't focused on
10 whether the Debtors would suffer injury if there was a
11 default, but on the probability that the purchaser would
12 suffer injury if there was a default. And to that extent I'm
13 going to allow the question, it goes to the statements made
14 that the credit bid purchaser is regarding the free and clear
15 language as extremely important and this basically says why is
16 that. So I'm going to allow it. It's impeachment.

17 Go ahead, Mr. Dane.

18 THE WITNESS: The credit bid purchaser certainly
19 doesn't intend to default on these obligations. They've
20 viewed that as a very low risk, particularly as we assess the
21 business today. But similar to the credit bid purchaser
22 electing not to assume these bonds and the related indemnity
23 agreements, these are things that impose additional
24 obligations on the business, the obligations that it was not
25 required to assume though this comprehensive restructuring.

1 To the extent that there is potential subrogation
2 claims in the future, even if they're disputed and not because
3 the Debtor believes that they've defaulted, but another party
4 who controls the bonds is making a claim and that claim is
5 successfully paid on, to the extent that a surety can
6 subrogate in those instances, even if it may be disputed or
7 maybe as a result of some unforeseen circumstance, that
8 clearly has a negative impact on the credit bid purchaser's
9 business and I don't think it's in line with what the credit
10 bid purchaser was expecting when it was negotiating the
11 purchase of these assets free and clear.

12 BY MR. LEO:

13 Q Well, just in terms of economics, Mr. Dane, if you could
14 isolate the surety recourse issues if there's a default by the
15 credit bidder or Newco from the other issues in the plan that
16 would cost tens of millions of dollars, do you think it's wise
17 to delay that closing, if you can compartmentalize that issue
18 for appeal?

19 MR. PEREZ: Your Honor, objection as to relevance.
20 What Mr. --

21 THE COURT: Sustained. Sustained.

22 BY MR. LEO:

23 Q You said the plan reflects the correct understanding of
24 surety credit. Can you tell me what that understanding is?

25 THE COURT: Mr. Leo, just so that you know, you're

1 coming across very faintly, and I think if you could get a
2 little closer to your phone, you'll have a little better
3 record of what the question was. Thank you.

4 MR. LEO: I'm sorry, Your Honor.

5 THE COURT: It's okay.

6 BY MR. LEO:

7 Q You testified that the plan reflects the correct
8 understanding of surety credit, and I think you said that in
9 response to a question from Mr. Woodard. And I want to know
10 what that understanding is.

11 MR. PEREZ: Objection, Your Honor. I don't believe
12 Mr. Dane ever used the term surety credit. So I'm going to
13 object to the form of the question -- statement.

14 THE COURT: All right. I agree, and I'll sustain
15 the objection on that basis. I don't think he said that.

16 MR. LEO: The treatment of surety bonds then, it
17 reflects the correct treatment of surety bonds. I just want
18 to know what his understanding is of that.

19 THE WITNESS: I think -- I believe that my testimony
20 was that the parties had discussed what they believed the
21 correct or appropriate legal treatment is of surety bonds
22 through a Chapter 11 restructuring, and that the plan was
23 consistent with what the expectation of those parties was,
24 which is that the Debtors' bonds represent pre-petition
25 unsecured claims and that they're going to be treated as such

1 as a claim under the plan.

2 Q Let me ask you a hypothetical. Under the plan as it's
3 currently contemplated credit purchasers are making \$350
4 million available to decommissioning, for decommissioning
5 costs. Could the credit purchasers apply that \$350 million to
6 non-bonded obligations and then leave the bonded obligations
7 in -- create a default giving rise to the sureties making
8 payments, could they make that election?

9 MR. PEREZ: Your Honor, I'm going to object to the
10 question. I think, in addition to being a hypothetical, which
11 I guess this is cross-examination, but the premise that
12 they're setting aside \$350 million for decommissioning I'm not
13 sure that's the correct premise.

14 THE COURT: Overruled. Mr. Dane, you can answer.

15 THE WITNESS: I do think that the question is
16 certainly hypothetical. That's not in line with the business
17 plan, that's not in line with the strategic objectives of what
18 the stakeholders have expressed that they are intending to do
19 while operating this business. This business is going to be
20 focused on certainly meeting all of its new obligations. So
21 hypothetically could it do that? I don't know, I think that
22 that would probably be a legal question.

23 If -- you know, it sounds like what you're
24 describing is somewhat of a fraudulent conveyance. If it was
25 taking assets out of a not satisfying liability, I don't know

1 the answer to that. That's a legal -- it's not -- it's
2 certainly not the business strategy. The credit bid purchaser
3 intends to meet its obligations.

4 BY MR. LEO:

5 Q And this may be a legal question, but I'll leave it
6 hanging out there and see if you can answer it. If that were
7 to happen, given your understanding of how adamant the credit
8 purchasers were about the liens stripping language, being free
9 and clear of all liens, if there was this election not to pay
10 bonded obligations, does that leave the surety that pays the
11 obligation without recourse against the credit purchaser and
12 Newco?

13 MR. PEREZ: It calls for a legal conclusion, Your
14 Honor.

15 THE COURT: Sustained.

16 MR. LEO: I have no further questions, Your Honor.

17 THE COURT: Mr. Dane --

18 UNIDENTIFIED SPEAKER: Your Honor, can I ask a few
19 follow-up questions?

20 THE COURT: In a minute. Mr. Dane, I want to back
21 up quite a ways. Can you tell me in the capital stack of the
22 current Fieldwood whether you have identified a fulcrum
23 creditor, or set of creditors?

24 THE WITNESS: Yes, Your Honor, the creditors that
25 represent the first lien term loan lenders, which is the \$1.15

1 billion principal amount of debt, are considered the fulcrum.
2 They are also the parties that are contributing the vast
3 majority of all the new money. They're contributing 205 of
4 the 220 million -- \$25 million of new money.

5 THE COURT: So --

6 THE WITNESS: And their claims are, you know,
7 impaired in the 40 to 60 percent -- 35 to 60 percent range.

8 THE COURT: I want you to assume for a moment that
9 there is a purchaser that is willing to pay \$10 million more
10 than the credit bid purchaser for the exact same assets and
11 terms, who would get that \$10 million under this current
12 capital stack?

13 THE WITNESS: It would be the same fulcrum creditors
14 because due to how impaired they are.

15 THE COURT: So out of that logic is the way that I
16 concluded that no one would buy this asset and assume any
17 additional obligations because the testimony is undisputed
18 that this was fully marketed and this was the best deal. How
19 would it be possible to find a buyer who would assume these
20 obligations without having the first lien term loan creditors
21 claiming entitlement to the money? If somebody's willing to
22 pay more, it isn't going to go to pay P&A. Right? It's going
23 to the (indiscernible). Am I missing something about this?

24 (No audible response)

25 THE COURT: Sorry, Mr. Dane, that was for you.

1 THE WITNESS: Yeah, you know, not only did the
2 company conduct several robust sales processes and was unable
3 to find an adequate buyer, but the company, through this very
4 long and complicated process also took into account
5 significant stakeholder input such as the input of the
6 government who expressed strong opinions on the sale process,
7 particularly given the nature of needing to solve for all the
8 decommissioning liabilities.

9 THE COURT: Right.

10 THE WITNESS: But I do agree that the fulcrum
11 security is very substantially under water, which is
12 recognized by the treatment of the second lien lenders in
13 terms of the --

14 THE COURT: Yeah, but I'm --

15 THE WITNESS: -- significantly (indiscernible)

16 THE COURT: I'm trying to figure out if I have
17 something wrong because there's a pretty strident argument
18 that's getting made that, when I concluded that the evidence
19 is overwhelming that no one would buy this and assume
20 additional liabilities, given that there was full marketing
21 and any additional money would go down -- any additional value
22 would flow to the first lien term lender creditors, I'm trying
23 to figure out if I reached the conclusion that is inescapable
24 -- which I think I did -- or if I missed the conclusion. And
25 that's why I'm asking you as the person probably closest to

1 the finances: Did I miss something when I made that
2 conclusion? Because, if so, I need you to fix it.

3 THE WITNESS: I think that, in order for value to
4 accrue further up the capital structure, a buyer would need to
5 be willing to pay a very, very large sum above what the plan
6 value is, something of the order of magnitude of under \$600
7 million before it would even become a discussion.

8 THE COURT: Thank you.

9 All right. Mr. Perez, I think you had some follow-
10 up questions.

11 MR. PEREZ: No, Your Honor.

12 MR. ZUBER: No --

13 THE COURT: I'm sorry.

14 MR. ZUBER: -- that was me, Mr. Zuber --

15 THE COURT: Oh, I'm sorry, Mr. Zuber.

16 MR. ZUBER: -- (indiscernible)

17 THE COURT: Well, let me -- we're going to -- we'll
18 do this in order.

19 So, Mr. Zuber, go ahead.

20 RECROSS-EXAMINATION

21 BY MR. ZUBER:

22 Q Mr. Dane, you talked about consideration being
23 free and clear of all claims, including subrogation rights.
24 Was there any discussion that you're aware of with anyone that
25 the subrogation rights that you were looking sell free and

1 clear of were rights that arose from the credit bid
2 purchaser's default, as opposed to any existing defaults by
3 the Debtor?

4 A As I've stated, I -- the -- the -- I don't recall the
5 specific conversation related to subrogation as a
6 consideration with respect to the credit bid purchase
7 negotiations because it was a premise from the beginning of
8 those discussions that the assets were being sold free and
9 clear of all liens, claims, and encumbrances. And there was
10 an understanding amongst the parties of what they expected the
11 treatment of the indemnity agreements associated with the
12 surety bonds and surety bonds overall, the treatment of those
13 -- of the bonds and the associated indemnity agreements to be
14 for the restructuring. So I think it was assumed as a part of
15 the broader discussion with respect to free and clear
16 expectation and bond treatment under the plan.

17 Q But there was no -- there was never an expectation that
18 the sale would be free and clear of the lease obligations
19 under the assumed leases, right?

20 A I can tell you (indiscernible)

21 MR. PEREZ: Well, let me object.

22 THE COURT: I'm sorry. I didn't --

23 MR. PEREZ: I think --

24 THE COURT: I didn't understand your answer,

25 Mr. Dane.

1 THE WITNESS: I think it was the expectation of the
2 credit bid purchaser that they were going to have to meet all
3 of their obligations under assumed contracts, including the
4 leases.

5 BY MR. ZUBER:

6 Q All right. So that would include that all defaults under
7 the leases would have to be cured as a condition precedent to
8 the assumption by the Debtor and the assignment to the credit
9 bid purchaser, correct? That's what the Bankruptcy Code
10 requires.

11 MR. PEREZ: Objection, Your Honor. I think that,
12 you know, the term "lease" is often used differently under
13 365. And these are federal leases, which are in the nature of
14 a license. So I'm not sure that the 365 analogy as to the
15 federal leases is particularly applicable, so I'm going to
16 object on that basis.

17 THE COURT: Mr. Zuber.

18 MR. ZUBER: Well, I would disagree. These are
19 federal leases. Leases are governed by Section 365 that deals
20 with assumption or rejection of contracts and unexpired
21 leases. These are unexpired federal leases. I'm asking if
22 Mr. Dane understood that, in order to have a lease assumed and
23 assigned, defaults would have to be cured.

24 THE COURT: Well --

25 MR. PEREZ: Your Honor, again, I'm not sure that's a

1 correct statement of law. Just because something is called a
2 "lease" -- all Texas oil and gas leases are called "leases,"
3 and they're not subject to 365 --

4 THE COURT: Well --

5 MR. PEREZ: -- so I'm not sure that's correct.

6 THE COURT: -- I'm not sure it's a lease, but it's
7 either a lease or an executory contract one. So I'm going to
8 go ahead and let him ask the question. Go ahead and answer
9 it, Mr. Dane.

10 THE WITNESS: We certainly understand that there --
11 to the extent that there appears cure amounts that are
12 required associated with assuming contracts or leases, that
13 that's something that is required at exit. I don't believe
14 that we view there to be any cure amounts associated with the
15 leases that are being purchased and assumed by the credit bid
16 purchaser.

17 BY MR. ZUBER:

18 Q Okay. So there were no defaults under the leases being
19 assumed by the credit bid purchaser, correct? The Debtor was
20 not in default on those leases being assumed and assigned,
21 correct?

22 A We have hundreds of leases and -- under these agreements.
23 I don't -- I don't recall any specific default associated with
24 our -- with our leases. But obviously, that would -- if we're
25 talking about default on P&A liability, then there's not an,

1 you know, outstanding default that is cured upon a -- upon
2 assignment.

3 Q Okay. And then, upon assignment, as you've just stated,
4 the credit bid purchaser is obligated to perform going
5 forward, right?

6 A The credit bid purchaser is going to be obligated to --
7 to appropriately address all of its obligations under its
8 assumed contracts, including its leases.

9 Q Is it your view that, when the credit bid purchaser
10 acquires these leases, that buying or acquiring these leases
11 or contracts free and clear of any defaults that it is
12 responsible for, as opposed to the Debtor being responsible
13 for?

14 UNIDENTIFIED: I --

15 MR. PEREZ: Object to the --

16 UNIDENTIFIED: Your Honor --

17 MR. PEREZ: Object to the question.

18 UNIDENTIFIED: -- I think it's irrelevant.

19 MR. ZUBER: Your Honor, I respectfully disagree.

20 It's not irrelevant. He -- this is -- you know, the testimony
21 is that, you know, nobody was going to buy these assets unless
22 it was free and clear of subrogation rights. What I'm trying
23 to understand is the subrogation rights, they're not defaults
24 that had to be cured as a condition to assumption. And the
25 only default that would ever give rise to subrogation would be

1 the credit bid purchaser's own default. I want to understand
2 if his view is that the purchaser is free and clear of those
3 defaults by the credit bid purchaser, if ever.

4 THE COURT: I'm not -- let me get you to ask the
5 question where it becomes relevant to what we're deciding
6 today. And seriously, asking him -- and you did this before --
7 - what his view of something is doesn't pertain to anything
8 we're doing. There may be something substantive here, and I
9 want to be able to get to it. But I think it's going to be a
10 legal conclusion, that's why I want to get a clear question.
11 So ask a question that is relevant to what we're doing, and
12 we'll see.

13 BY MR. ZUBER:

14 Q Does the credit bid purchaser acquire these leases under
15 the credit bid purchase agreement free and clear of any
16 defaults of its own, as opposed to somebody else's default?

17 MR. PEREZ: Objection, Your Honor. I'm not even
18 sure what that means. And obviously, the document speaks for
19 itself. He's asking for a legal conclusion.

20 THE COURT: Sustained that that's requesting a legal
21 conclusion.

22 BY MR. ZUBAR:

23 Q I may have asked you this. Is it your testimony that the
24 credit bid purchaser would not have purchased the assets if
25 the sale wasn't free and clear of surety subrogation rights?

1 MR. PEREZ: Objection, Your Honor. Asked and
2 answered.

3 THE COURT: Sustained.

4 MR. ZUBER: I have no further questions. Thank you,
5 Mr. Dane. Thank you, Your Honor.

6 THE COURT: Thank you.

7 Mr. Woodard.

8 MR. WOODARD: Your Honor, I don't have any questions
9 of Mr. Dane. I would like a shot at throwing myself on the
10 floor before the Court. I'd like to try to answer the Court's
11 question.

12 THE COURT: Well, we're going to -- let's -- I want
13 to close an evidentiary record and I don't think --

14 MR. WOODARD: But it --

15 THE COURT: -- you're volunteering to testify, but
16 we'll see in a moment. If you want to, we'll let you call
17 yourself --

18 MR. WOODARD: May --

19 THE COURT: -- as a witness.

20 Mr. Rios.

21 MR. RIOS: No further questions, Your Honor.

22 THE COURT: Mr. Perez?

23 MR. PEREZ: Nothing further, Your Honor. Thank you.

24 THE COURT: Thank you. Mr. Dane -- or does any
25 other party have any questions for Mr. Dane? If so, please

1 press five-star.

2 (No verbal response)

3 THE COURT: All right. No other questions,
4 Mr. Dane. You're excused as a witness. Obviously, you're
5 welcome to stay in the hearing.

6 (Witness excused)

7 THE COURT: Any further evidence by the Debtor? I
8 think the sureties did not wish to offer evidence today.

9 MR. PEREZ: Your Honor, other than Mr. Dane's
10 declaration and his direct testimony, no further evidence.

11 THE COURT: All right. Is there any rebuttal
12 evidence?

13 (No verbal response)

14 THE COURT: All right. I'm going to show the
15 evidentiary record as closed.

16 I do think that the -- and tell me if I'm wrong --
17 the motion for reconsideration and factor one of the motion
18 for the stay pending appeal are essentially identical, in
19 terms of the arguments that support them. And if somebody
20 believes that there is any difference, then we can take them
21 separately, but I think it's the identical argument.

22 So, Mr. Zuber, if you want to -- if you think
23 they're different, you can do them separately. But if you
24 think they're the same, I'm going to let you argue those two
25 things together, just so you're not having to tell me the same

1 thing twice to preserve your record.

2 MR. ZUBER: No, Your Honor, I think they're
3 essentially the same issue.

4 THE COURT: Okay. Well, then let's go to the
5 argument then.

6 MR. ZUBER: Your Honor, we've been talking a bit
7 about Section 363 and Section 365. And you know, I addressed
8 the arguments that the confirmation hearing largely with
9 respect to sale free and clear under Section 363(f), and
10 whether any of the plain language applied or if any of the
11 subsections of 363(f) were applicable.

12 But I would like to talk a little bit -- and I know
13 a lot of this has been brought up in the examination -- about
14 something more fundamental, which is essentially Section 365,
15 Your Honor. And you know, the Debtor has many federal leases.
16 And under the plan, it has an opportunity under the Bankruptcy
17 Code, under Section 365, to either assume certain leases or to
18 reject certain leases; it has that choice. And it decided
19 that certain leases were burdensome and had no value and chose
20 to abandon them.

21 And it chose, also, to seek to assume and
22 subsequently assign certain leases to the credit bid
23 purchaser. Those leases were deemed to be very valuable or
24 saleable, and they were specifically chosen and designated to
25 be assumed and assigned.

1 As a condition for assumption and assignment of a
2 contract or a lease under Section 365, all defaults have to be
3 cured and there needs to be a showing adequate assurance of
4 future performance under the lease. And I believe, Your
5 Honor, it is black-letter law that a lease must be assumed or
6 rejected in its entirety. The assignee must accept both the
7 benefits and the burdens of the assumption.

8 Here, the credit bid purchaser paid over a billion
9 dollars for the assets that it elected to acquire, comprised
10 largely of these leases and related rights. So the leases
11 obviously have significant value and the \$350 million in
12 assumed liabilities was part of the consideration. Once the
13 leases are assumed and the credit bid purchaser decides to
14 move forward, it doesn't get a free pass. It has to comply
15 with the law and to pay its rent, so to speak. It has a legal
16 obligation to perform. So, once those leases are assumed and
17 assigned to the credit bid purchaser, the credit bid purchaser
18 becomes the primary obligor under federal law for all
19 decommissioning obligations as to all existing wells,
20 pipelines, platforms, et cetera, as well as for any new wells
21 and structures.

22 The credit bid purchase agreement expressly provides
23 that the credit bid purchaser will assume all liability,
24 whether arising before or after the (indiscernible) to the
25 extent arising out of the plugging, abandonment, and

1 decommissioning of any and all related salvage, site
2 clearance, and surface restoration activities from field
3 assets that are acquired interests, to the extent required
4 under applicable law. And that is in the credit bid purchase
5 agreement, Section 11.1, dealing with the buyer's assumption
6 of liabilities.

7 Upon assumption and assignment, the credit bid
8 purchaser becomes the primary obligor for all decommissioning
9 on these leases, and the predecessor owners and the sureties
10 become secondarily liable. Once the credit bid purchaser
11 takes assignment of these valuable leases, it has the full and
12 complete obligation to confirm. And if it's going to look to
13 the surety for the Debtors, which is secondarily liable to the
14 credit bid purchaser's primary obligations, there's nothing in
15 the Bankruptcy Code or any other law that would excuse the
16 credit bid purchaser's obligation to a secondary obligor when
17 it defaults. The surety did not guarantee the credit bid
18 purchaser's primary obligations. And the bonds, although they
19 may be noncancellable, they remain secondary obligations, in
20 the event that the credit bid purchaser, the primary obligor,
21 doesn't perform.

22 The Debtors chose to assume and assign to the credit
23 bid purchaser valuable leases. These leases were unabandoned,
24 they have significant value. Assumption requires the credit
25 bid purchaser to perform. There's significant value here.

1 The only time surety subrogation rights may arise is if the
2 credit bid purchaser, as assignee, as -- and in its capacity
3 as the primary obligor does not perform its assumed
4 obligations as required by the law, and which it proposes to
5 meet as part of the asset purchase agreement of -- as part of
6 the assumed liabilities.

7 A guarantee of a future lease obligation by a
8 guarantor to a predecessor is not a guarantee that can be
9 utilized by the assignee of an assumed lease. The assignee
10 has primary obligation -- primary obligations. If it doesn't
11 perform as it says it's going to perform and as it's required
12 to perform, there's nothing in the code that, as a matter of
13 equity, that should allow that the ultimate loss to be borne
14 by a predecessor surety, and that the credit bid purchaser
15 should be excused from the consequences of its own breach of
16 its lease obligations that it has voluntarily chosen to assume
17 in exchange for the enjoyment of the benefits and the value of
18 those leases.

19 So I think that, before we get into 363(f), which
20 I'm going to turn to momentarily, I believe that, under
21 Section 365, once those leases are assumed and assigned and
22 defaults have been cured, the assignee has an obligation to
23 perform.

24 As set forth, Your Honor, in our arguments with
25 respect to 363(f) --

1 THE COURT: Well, before we leave 365 --

2 MR. ZUBER: Yes. Yes, Your Honor.

3 THE COURT: -- I think the way I -- the way I've
4 been looking at this -- and I need you to address this
5 specifically -- is the Debtor has an obligation to perform
6 under the federal leases. And what we are terminating by the
7 order is your right to step into the Federal Government's
8 shoes. And I know you think we shouldn't do that, but I don't
9 see how that violates 365.

10 I got it that they may have other problems that you
11 want to identify. But take me specifically into 365, since
12 that's where you started your argument. And unless -- and
13 tell me, first of all, if I'm wrong, if the Debtor isn't
14 agreeing to perform under the federal leases. I think they
15 are. So that meets their duty under 365. What, under 365, do
16 the surety bonds hold as rights, other than the right to step
17 into the Federal Government's shoes, which is what we're
18 cutting off? But that's not a 365 right, is it?

19 MR. ZUBER: It's an obligation under Section 365.
20 When a third party takes assignment of a lease from the
21 Debtor, the defaults have to be cured, and then the buyer, the
22 assignee, takes free and clear and moves on its merry way to
23 operate the leasehold or to enjoy the assets that it
24 purchased. So, at that point, going forward, it is now the
25 primary obligor under the assumed and assigned leases.

1 If it doesn't perform, there must be consequences.
2 They shouldn't be able to take assignment of these leases when
3 there's --

4 THE COURT: Take --

5 MR. ZUBER: -- no default by the Debtor --

6 THE COURT: Take me into the light, which is 365 --
7 I mean, this is where you started -- and show me how the
8 termination of subrogation rights is a violation of any part
9 of 365.

10 MR. ZUBER: There's nothing in the Bankruptcy Code
11 that allows for a purchaser --

12 THE COURT: No, let's answer --

13 MR. ZUBER: -- to take free --

14 THE COURT: -- my question, Mr. Zuber. Take me into
15 --

16 MR. ZUBER: Oh --

17 THE COURT: -- 365 --

18 MR. ZUBER: -- excuse me.

19 THE COURT: -- and show me which part of 365 is
20 violated by a termination of a subrogation right where they're
21 agreeing to perform under the lease, which language?

22 MR. ZUBER: 365 -- 365 says that you can only assume
23 a lease or a contract if there has been default if, at the time
24 of the assumption, the default is cured and there's adequate
25 assurance of future performance.

1 THE COURT: Right.

2 MR. ZUBER: So (indiscernible) future performance
3 and now they are required to adequately perform. And if they
4 don't perform, why should that cut off rights of third
5 parties? I don't --

6 THE COURT: My question is --

7 MR. ZUBER: There's nothing in the Code --

8 THE COURT: You're asking me a question. I'm asking
9 you a question. Which part of 365 says you can't cut off a
10 subrogation right. That's -- this is where you started. Read
11 me the language that they're violating.

12 MR. ZUBER: It doesn't say it in there that you --
13 it -- I'm going -- I'm talking about what 365 requires. It
14 requires a cure of default and performance going forward. The
15 purpose of free and clear -- well, I'm going to back up on
16 free and clear for a moment.

17 365 allows for assumption and assignment if you cure
18 a default and you perform going forward. There were no
19 defaults to be cured. So they were able to assume and assign
20 these leases where the Debtor was not in default and allow a
21 third-party assignee to move forward and to perform. If it
22 doesn't perform, there's nothing in the Cod that says you take
23 it now free and clear of rights (indiscernible)

24 THE COURT: Look, we're getting circular here.
25 That's why I keep asking you. You're telling me there's

1 nothing in the Code that allows me to do this, and I
2 understand that argument. That's a different argument than
3 whether it's prohibited under 365. You started off by saying
4 this is prohibited under 365, and I'm asking you to read me
5 the provision of 365 that prohibits this.

6 MR. ZUBER: I think you're asking me to find the
7 negative when I'm saying there is an affirmative obligation
8 when you assume under 365, when read in conjunction with 363,
9 to assume and assign leases and to perform going forward, make
10 adequate --

11 THE COURT: Where is there an affirmative obligation
12 to the bondholders? Not if there is an affirmative obligation
13 to the feds. Where is the affirmative obligation to your
14 clients under 365?

15 MR. ZUBER: They have an obligation to perform under
16 the lease. The lease -- they have to perform under federal
17 law and the leases. They don't perform, then the remedies of
18 those who are aggrieved should be preserved. I don't know --
19 I mean, 365 is the process for assuming and assigning
20 contracts. Contracts are assumed, there's no default --

21 THE COURT: The feds aren't --

22 MR. ZUBER: -- they were assigned (indiscernible)

23 THE COURT: -- objecting. The feds aren't
24 objecting, are they? I mean, the feds aren't objecting,
25 apparently believing they have adequate assurance of future

1 performance. You're not a party.

2 MR. ZUBER: Oh --

3 THE COURT: Where is the 365 obligation?

4 MR. ZUBER: There is -- there -- I'm not saying
5 there's a violation of 365. I'm saying 365 requires the
6 assignee to perform going forward. And they need to perform --
7 -

8 THE COURT: Okay.

9 MR. ZUBER: -- and they don't get the right to
10 perform free and clear of their own defaults.

11 THE COURT: Correct. Okay. Let's move to your next
12 section, the next argument you want to make then.

13 MR. ZUBER: Thank you. So, as we've stated in our
14 papers, there's really nothing that, in our view, under
15 Section 363, that would allow a sale free and clear of surety
16 subrogation rights.

17 And in order for 363(f) to apply, the creditor must
18 have an interest in the property being sold. We would argue
19 and we cited two Texas cases for the proposition that, under
20 Section 363(f), you're only dealing with *in rem* property
21 interest, not *in personam* claims.

22 This is a plain language argument, Your Honor, under
23 the plain language of 363(f). The Code says the trustee may
24 sell free and clear of any interest in such property. The
25 sureties have no interest in the property being sold. The

1 sureties rights of subrogation are future rights against
2 (indiscernible) Debtor third party, they are not claims
3 against the Debtor. They don't exist today, they may never
4 exist. And if they do exist, they will only exist by virtue
5 of the assignee's default under an assumed lease.

6 We're not aware of anything under (f)(1), which says
7 you can sell free and clear if non-bankruptcy law would permit
8 the sale free and clear. We're not aware of any non-
9 bankruptcy law that would permit that.

10 The sureties do not consent, so they haven't
11 satisfied (f)(2).

12 Future subrogation rights are not liens under the
13 definition under the Bankruptcy Code or any other
14 construction.

15 There's no bonafide dispute over these future
16 rights. They don't even exist, they may never come into
17 existence. These are not claims that can be sold free and
18 clear. You know, there is no claim, there is no current
19 interest, there is no right; therefore, we couldn't be
20 compelled in a proceeding to accept a money satisfaction
21 because our interest hasn't even arisen yet.

22 So I would argue, Your Honor, that the Debtors
23 cannot sell free and clear of future claims against a
24 nonDebtor third party that do not currently exist, may never
25 exist.

1 THE COURT: Okay. So let's --

2 MR. ZUBER: And if they do exist, they only --

3 THE COURT: Let's back up a minute. Your client has
4 no rights against the credit bid purchaser, except as pertains
5 to the credit bid purchaser's performance on the property,
6 right? Because your bond only applies to performance on the
7 property.

8 MR. ZUBER: (Indiscernible).

9 THE COURT: The same is true for the feds.
10 Everything is linked to --

11 MR. ZUBER: Yeah, I'm not --

12 THE COURT: -- the property. These are -- you have
13 the right -- the feds have the right personally to sue the
14 owner of the property because they own the property. It's not
15 that there is suddenly some duty, if they didn't acquire the
16 property of the credit bid purchaser, to pay for P&A. They
17 owe the P&A because they're acquiring the property.

18 So, if you take a look at the language under (f),
19 "free and clear of any interest in such property." Why are
20 the rights of the feds and your clients' rights not linked to
21 the fact that they are going to own the property?

22 MR. ZUBER: Well, it's not a right that arises in
23 connection with the property, it's a right that arises in
24 connection with the conduct of the acquirer of the property
25 who defaults in its obligations to perform.

1 THE COURT: But only --

2 MR. ZUBER: Don't -- I mean --

3 THE COURT: -- pertaining to the property, right?
4 If they didn't buy the property, they wouldn't have a duty.

5 MR. ZUBER: But it's not a lien, it doesn't seem to
6 fit anywhere into 363(f) anywhere. It's not --

7 THE COURT: It's not a lien.

8 MR. ZUBER: Our subrogation --

9 THE COURT: It says:

10 "-- free and clear of any interest in such property
11 of an entity other than the estate."

12 THE COURT: You have an equitable interest in what
13 they do on this property, I got that.

14 MR. ZUBER: And I don't -- we respectfully disagree,
15 Your Honor. I don't think this is any right -- it's not even
16 a right that exists today. It may never exist. How can it be
17 sold free and clear of a claim against a third party? These
18 are not -- these are not claims against the Debtor.

19 The purpose of 363(f) is to allow the sale free and
20 clear of claims against the Debtors, so that the Debtor -- so
21 that the purchaser of the assets is not saddled with the
22 Debtor's obligations. The Debtors' obligations were never in
23 default, they take these going forward. There should be a
24 line in the sand. Once the sale closes and they take over
25 these leases and they have to perform, they have to perform.

1 They shouldn't get a free pass if they default and don't
2 perform and we have to step up and pay somebody on a guaranty
3 that we issued to someone else. I just don't see how these
4 are claims or interests or anything that can be sold free and
5 clear. And I think that these are --

6 THE COURT: So take --

7 MR. ZUBER: -- not even contingent claims.

8 THE COURT: Take me to (f)(5) for a minute. You
9 said pretty quickly that you can't be compelled to take a
10 money satisfaction. I assume, if you pay money, you can be
11 compelled to take money in satisfaction. I'm a little
12 confused about how you're reading (f)(5).

13 MR. ZUBER: Well, (f)(5) says you have to be
14 compelled to accept a money satisfaction of your interest.
15 There is no current interest. There is -- and even if there
16 were, it's not even quantifiable at this point.

17 THE COURT: Well, but if you have to pay --

18 MR. ZUBER: It begs the question.

19 THE COURT: If you have to pay, you could be
20 compelled to accept money in satisfaction of the payment,
21 right?

22 MR. ZUBER: Only if you -- only if you were -- only
23 if you could be compelled to accept the satisfaction of your
24 interest. We can't compelled to accept the satisfaction of
25 our interest because our interest doesn't even exist right

1 now. How would we even know what our interest is?

2 THE COURT: Well, we may --

3 MR. ZUBER: The only -- our interest only --

4 THE COURT: Well, we estimate --

5 MR. ZUBER: -- (indiscernible) in default.

6 THE COURT: -- things all the time, right? But
7 okay. I'm just trying to understand your (5) argument.

8 But go ahead then with the rest of your argument.

9 MR. ZUBER: I think that there's case law, I think
10 we cited several cases out of Texas that say you can't sell
11 free and clear of future rights, things that don't exist. We
12 don't think these rights exist.

13 And I keep coming back to it, Your Honor, and I know
14 I said it three times, is these rights will only exist in the
15 future if the credit bid purchaser defaults. How does a court
16 of equity believe it to be equitable that our rights will be
17 lost when our rights only arise because the purchaser didn't
18 do what it was legally obligated to do and which it said it
19 would do?

20 THE COURT: So --

21 MR. ZUBER: So I don't understand --

22 THE COURT: So I --

23 MR. ZUBER: -- the credit --

24 THE COURT: You asked --

25 MR. ZUBER: -- bid purchaser --

1 THE COURT: -- me a question, so I want to skip
2 ahead to the third factor for a moment. Tell me what, on the
3 evidentiary record we have -- I want you to stick with what
4 the evidence shows -- what's the financial cost to your client
5 of us doing this? How much is the financial loss to your
6 client?

7 MR. ZUBER: It could be the complete penal sum --

8 THE COURT: No, no, no.

9 MR. ZUBER: -- of their bond, Your Honor --

10 THE COURT: No, no, no.

11 MR. ZUBER: -- which is a hundred --

12 THE COURT: No, no, no, sir. Stick to the
13 evidentiary record. What, under the evidentiary record, is
14 the financial loss to your client? I don't want some
15 speculation of something. We've -- you've had plenty of
16 chances throughout the case --

17 MR. ZUBER: (Indiscernible)

18 THE COURT: -- to present evidence and I recall none
19 that show that this costs your client anything. And you all
20 have spent quite a bit of time today trying to prove that
21 there won't be a default; and, therefore, it won't cost your
22 client anything.

23 MR. ZUBER: Well --

24 THE COURT: How do you meet Factor three? You're
25 asking me about what's fair --

1 MR. ZUBER: Your Honor, I'll --

2 THE COURT: -- when I'm dealing with the evidentiary
3 record to figure out what's fair. You don't have a loss here.

4 MR. ZUBER: Our --

5 THE COURT: You're just trying to stand --

6 MR. ZUBER: Our bonds are --

7 THE COURT: -- in the way of a sale.

8 MR. ZUBER: We don't want to --

9 THE COURT: Good. Then tell me --

10 MR. ZUBER: -- stand in the way --

11 THE COURT: -- what your economic --

12 MR. ZUBER: -- of a sale.

13 THE COURT: -- loss --

14 MR. ZUBER: We just don't want them to --

15 THE COURT: Tell me what the evidentiary record
16 shows your economic loss will be under Factor three.

17 MR. ZUBER: Our bonds and indemnity agreements are
18 part of the evidentiary record, they were admitted at the
19 confirmation hearing.

20 THE COURT: Your bonds are there.

21 MR. ZUBER: Our evidence --

22 THE COURT: What's the expected loss under your bond
23 if we confirm the plan? What does the evidence show?

24 MR. ZUBER: It depends on whether the credit bid
25 purchaser performs.

1 THE COURT: That's not --

2 MR. ZUBER: If the credit bid --

3 THE COURT: That's not --

4 MR. ZUBER: -- purchaser performs --

5 THE COURT: What does the evidence --

6 MR. ZUBER: -- then we would --

7 THE COURT: -- show about performance then? The
8 evidence --

9 MR. ZUBER: The evidence --

10 THE COURT: -- is undisputed --

11 MR. ZUBER: -- shows that --

12 THE COURT: -- that they're going to perform. So
13 what's the evidence of your loss?

14 MR. ZUBER: The evidence shows that our loss will be
15 what -- our loss is contingent upon the credit bid purchaser
16 failing to perform. If they perform, we won't have a loss,
17 that would be great.

18 THE COURT: But I need to know --

19 MR. ZUBER: If they don't perform --

20 THE COURT: -- under the current evidentiary record
21 -- you're telling me I'm hurting your clients. And what
22 you're describing is maybe some day there will be an injury
23 that the evidence shows there won't be. So I'm trying to
24 figure out, under Factor three of stay pending appeal --
25 you're saying, Judge, you need to act like you're a court of

1 equity. The evidence is this will stop the sale and that it
2 will do so with no injury to your client. Maybe I'm missing
3 the evidence. Tell me the evidence that shows injury to your
4 client.

5 MR. ZUBER: The evidence is that they're acquiring
6 the assets free and clear of our subrogation rights. And if
7 and when they default, we will have an injury to the full
8 extent of our penal sum of our bond --

9 THE COURT: And quantify --

10 MR. ZUBER: -- \$140 million.

11 THE COURT: Quantify for me, under the evidentiary
12 record, whether they're going to default; and, if so, what the
13 cost will be. We deal in evidence, not in guesswork. What's
14 the evidence?

15 MR. ZUBER: They say they're not -- I don't -- they
16 say they're going to perform. If they perform, there's no
17 damages. If they don't perform, we're trying to preserve our
18 rights.

19 THE COURT: Yeah, but you --

20 MR. ZUBER: The evidence shows --

21 THE COURT: You got to --

22 MR. ZUBER: -- that they're --

23 THE COURT: Factor three says that you have to show
24 me -- I have to weigh what is the injury to your client. What
25 does the evidence show --

1 MR. ZUBER: The injury --

2 THE COURT: -- that it will be?

3 MR. ZUBER: The injury (indiscernible) it's a legal
4 injury under Section 363(m), that, if the Circuit Court were
5 to follow certain circuits and we don't get a stay pending
6 appeal, then our rights, even if they're ultimately vindicated
7 by the District Court or the Circuit Court or the U.S. Supreme
8 Court will have little or no value to us because it will be
9 statutorily moot under Section 363(m). So the injury is the
10 loss of an appellate process, an appellate review
11 (indiscernible) if the credit bid purchaser defaults.

12 THE COURT: Okay. Go ahead then.

13 MR. ZUBER: So I think I've made my arguments, Your
14 Honor. And for those reasons (indiscernible) you'll
15 reconsider your determination of sale free and clear of --

16 THE COURT: So do you want to deal with factors two
17 and four or --

18 MR. ZUBER: -- (indiscernible).

19 THE COURT: -- or not?

20 MR. ZUBER: Well, as far as factor two, irreparable
21 injury, I've argued already that irreparable injury would be
22 largely premised upon Section 363(m), the loss of our
23 appellate rights. If we're denied a stay pending appeal, the
24 Debtors presumably will move to dismiss the appeal as
25 statutorily moot, and that result, which we will oppose, if

1 achieved, will constitute irreparable harm, and the sureties
2 would be left with no remedy from an appellate court.

3 In terms of balancing the harms, we see little or no
4 harm. The Debtor has \$107 million in cash. It's got an
5 undrawn line of credit. Oil prices are very high. There's no
6 reason that the Debtor can't continue to operate in the
7 ordinary course of business for a relatively short period of
8 time, profits will continue to be derived. And this narrow
9 issue is not going to ever impact the credit bid purchaser's
10 rights in the short term, if ever. But if it does, it will be
11 down the road and only --

12 THE COURT: Let's talk about --

13 MR. ZUBER: -- (indiscernible).

14 THE COURT: -- short term. What -- are you only
15 looking for a short-term stay? I thought you wanted a stay
16 pending the conclusion of the appeal. So how long do you
17 think that's going to take to get up to the Fifth Circuit and
18 back?

19 MR. ZUBER: I don't know, Your Honor. My
20 expectation is that we can seek expedited review and an
21 emergency hearing and we can get this done in a couple of
22 months, but I would have to rely upon Mr. Rios or Mr. Million
23 to give me guidance on the timing. But I would not anticipate
24 that this would be a very, very lengthy stay. And we believe
25 that, in the short term, with the price of oil and the current

1 operations and the Debtor has, in its last operating report, I
2 believe, \$107 million in cash, it's got a ten-million-dollar
3 DIP loan, so I don't believe it's (indiscernible).

4 THE COURT: So how long of a stay do you want?

5 MR. ZUBER: I don't see any --

6 THE COURT: How many days of a stay do you want?
7 Because I think it will be a two-year appeal, given what I've
8 seen. How many days of stay do you want?

9 MR. ZUBER: Your Honor, I would anticipate until we
10 get a determination from the last appellate court. You know,
11 perhaps if I had an opportunity to speak with my clients, I --
12 you know, perhaps we could agree to some short (indiscernible)
13 appeal that we could recommend to Your Honor. But at this
14 point, I --

15 THE COURT: Okay. Thank you.

16 Mr. Woodard.

17 MR. WOODARD: And Your Honor, I'm not going to
18 recite all of what Mr. Zuber had to say. I just wanted to --
19 I wanted to have the opportunity to take a swing at answering
20 the Court's questions that was openly posed and directed to
21 Mr. Dane to have to field. But -- and I believe the Court's
22 question was: Why would any other buyer assume more
23 obligations at the time of this closing? And I think the
24 answer is they don't, no other buyer would assume any old
25 obligations, but this buyer did assume all new obligations.

1 And I harken back, Judge, to my sixth -- I was number six in
2 the line to try to convince the Court that these are all post-
3 confirmation, post-effective-date obligations.

4 You also asked Mr. Zuber about the -- aren't --
5 isn't everything tied to the interest in the property. And I
6 think the answer from the surety side, as we sit here today,
7 is we're not tied to the property. We are tied solely to an
8 obligation to the Government. We don't have anything to do
9 with that property, realistically. We have -- there's no --
10 anything -- there's no direct ties, those have all been cut
11 off.

12 What we do have is an obligation to the United
13 States Government -- at least Lexon does -- as to the U.S.
14 Government. And if the U.S. Government acts on its post-
15 effective-date obligations to make a demand on us, while there
16 may be a relationship between the property and the Government,
17 there isn't between us, so that our payment --

18 THE COURT: I thought that --

19 MR. WOODARD: -- goes to --

20 THE COURT: So I may have this wrong then. I
21 thought, under the bonds, the Government was only entitled to
22 make a demand if the property wasn't properly retired. Is
23 that wrong?

24 MR. WOODARD: No, I think that -- I think that
25 that's correct. But that relationship is solely between the

1 credit bid purchaser and the Government now because our
2 indemnity is gone. While the bonds continue on, we don't have
3 any claim over or against them for the -- they -- for the
4 Debtors' obligations. These are all new obligations that the
5 -- and that's what I'm saying.

6 When the Court wondered why would a buyer assume
7 more liability, I couldn't answer that question. I mean, I
8 think the answer is because it's the difference between 250
9 million and 1 billion, I think is the answer. But that's up
10 to them. You know, P.T. Barnum had lots of good phrases to
11 say about fools born every minute.

12 But the bottom line is this buyer chose to assume
13 new obligations. We didn't ask them to do it, but they do it.
14 And those obligations run directly from the new buyer, from
15 the credit bid purchaser or its affiliates, to the United
16 States Government. We didn't create those. Those are there
17 by operation of the 30 C.F.R. 546, et seq. And at the end of
18 the day, the Government can call directly on them. As
19 Mr. Dane said, they were -- they are going to be living up to
20 the terms of that because they have a direct obligation to the
21 Government.

22 The Government can also, because of our remaining
23 now, new continuing obligation post-confirmation, post-
24 effective-date, they can call our bonds if, under the
25 obligations from new buyer, post-petition, post-effective-date

1 obligations are defaulted.

2 THE COURT: Pertaining to the property.

3 MR. WOODARD: Pertaining to the property, as between
4 the Government and new buyer.

5 THE COURT: But if they don't buy the property, the
6 Government can't make a claim against the buyer, right? They
7 have to buy the property for the Government to make a claim
8 against them.

9 MR. WOODARD: Correct because the moment they signed
10 those leases --

11 THE COURT: Okay.

12 MR. WOODARD: -- the statutory scheme makes them
13 fully --

14 THE COURT: Right.

15 MR. WOODARD: -- liable.

16 THE COURT: And their call on your bond is -- they
17 may make a wrongful call, and you may have a third-party
18 obligation even if they make a wrongful call, I got that. But
19 their contractual right to calling the bond is only if there
20 is a property-related failing to plug and abandon and retire
21 the asset, right?

22 MR. WOODARD: That is true, but that is a post-
23 petition, post-effective-date obligation.

24 THE COURT: I got that, I got that.

25 MR. WOODARD: So, I mean, if --

1 THE COURT: Okay.

2 MR. WOODARD: Thank you.

3 THE COURT: And anything further, Mr. Woodard?

4 MR. WOODARD: Nothing, Judge.

5 THE COURT: Thank you.

6 Mr. Rios?

7 MR. RIOS: Thank you, Your Honor. I won't belabor
8 the points already being made by Mr. Zuber and Mr. Woodard. I
9 would just point out that one of the things that
10 (indiscernible) the sureties' obligation is a default; that,
11 when we bonded the Debtor, we did not anticipate we would be
12 conditioning our obligation on a default of a future credit
13 purchaser who has assumed the obligation.

14 One of the things I point out in my very short
15 joinder is that the structure here has changed. You know, the
16 real harm is the impairment of suretyship status; that the
17 surety has certain rights by virtue of being a surety, and
18 those are being removed by the Court in exercising lien
19 stripping powers, which of course we disagree with.

20 But it can lead to absurd consequences. I want to
21 -- the effect of surety -- the impairment of suretyship status
22 is -- it will decrease the incentive of the party obligated to
23 perform to perform and increase the likelihood of the loss to
24 the surety. And I guess I --

25 THE COURT: Do I have any evidence of that?

1 MR. RIOS: You have evidence that this is changing
2 the structure of the relationship because we have no recourse
3 --

4 THE COURT: Do I have any evidence that --

5 MR. RIOS: -- against the party that --

6 THE COURT: Do I have any evidence that the
7 purchaser is less likely to perform than the current owner?
8 It seems to me I have the opposite.

9 MR. RIOS: Yeah, but the -- what I'm talking about
10 here is the recourse in the event there is nonperformance.
11 And --

12 THE COURT: So if there were --

13 MR. RIOS: -- the change --

14 THE COURT: If there were --

15 MR. RIOS: -- in the (indiscernible).

16 THE COURT: And this is why I -- what I ruled
17 before. And let me -- if there were -- if we don't approve
18 this deal, versus if we do approve the deal, what I held
19 before was that you're more likely to pay on your bond if we
20 don't approve it than if we do approve it, meaning that you
21 were better off by us approving it. So are you telling me
22 that I've got that backwards; and that, if we approve the
23 deal, your bond is more likely to be called than if we don't
24 approve the deal?

25 MR. RIOS: With respect to the property the credit

1 purchaser is acquiring --

2 THE COURT: So --

3 MR. RIOS: -- I don't know that the --

4 THE COURT: No, I'm just saying --

5 MR. RIOS: It is --

6 THE COURT: -- I have an evidentiary record, I have
7 two possibilities: One is I confirm the plan and authorize
8 the sale, and the other is I don't and the Debtor liquidates.
9 If I don't, the conclusion I've reached is the bonds are more
10 likely to be called than if I do. And the evidence of whether
11 the bonds are likely to be called if I do approve the plan is
12 they're unlikely to be called. So I'm trying to figure out
13 how this hurts the bonds overall because the evidence seems to
14 show it helps them, but you're arguing the opposite. Tell me
15 how that's in the evidentiary record.

16 MR. RIOS: Well, I'm not sure the effect to the
17 sureties in the event there is a liquidation is in the
18 evidentiary record at all. But I can tell you that the
19 nickel, as it flows through the plan -- let's assume the
20 sureties get their 14 percent as a Class 6B creditor after
21 surviving the objections the Debtor is surely to raise that
22 the -- our claims are contingent. But let's assume the nickel
23 doesn't flow through the plan that way, that you have a
24 trustee. There are certain obligations that can't be
25 abandoned, there are certain properties that are going to be

1 sold off, that the credit purchaser would have then the
2 decision to, you know, acquire the properties through
3 foreclosure and potentially put themselves in the line of
4 title. I think the nickel flows a lot differently under those
5 circumstances, Your Honor, and I don't think that is in the
6 record.

7 THE COURT: I think there's a pretty extensive --

8 MR. RIOS: And I --

9 THE COURT: -- liquidation analysis in the record,
10 and I think we have testimony that the Debtor won't be able to
11 perform the P&A and the ARO if they don't bring in new
12 capital. Maybe I'm wrong about that, but I think that's in
13 the record.

14 MR. RIOS: But I believe there's a subset of assets
15 that would be sold, namely the NewCo assets, that would
16 probably meet those obligations, the decommissioning
17 obligations, and be sold to someone who would be a new
18 successor in the --

19 THE COURT: Well --

20 MR. RIOS: -- chain of title.

21 THE COURT: -- where is that in the record?

22 MR. RIOS: I mean -- I don't know that it's in the
23 record, Your Honor; I don't know that it's not.

24 THE COURT: Well, what's in the record -- and this
25 is what I went over with Mr. Dean -- was they maximized the

1 amount they could get. If they can ever get more -- and he
2 testified -- I didn't know this -- up to four or \$500 million
3 will go out to the lienholders, so there won't be protection
4 for you guys. I really don't understand why you all don't
5 think you're better off with the plan. But you know, I'm not
6 hearing it in the record, in any event.

7 MR. RIOS: Yeah. Well, how does the money get to
8 the lienholders if the decommissioning obligations have to be
9 met because they can't be abandoned?

10 THE COURT: Well, the --

11 MR. RIOS: Then the --

12 THE COURT: -- lienholders will --

13 MR. RIOS: -- (indiscernible).

14 THE COURT: -- take the assets.

15 MR. RIOS: Well --

16 THE COURT: I mean -- I'm sorry -- they take the
17 proceeds of whatever sale there are, right?

18 MR. RIOS: Yes, but there would still be obligations
19 that could not be abandoned and would have to be met.

20 THE COURT: Correct.

21 MR. RIOS: And I --

22 THE COURT: And the Debtor --

23 MR. RIOS: Fourteen --

24 THE COURT: -- can't meet them, so -- what happens
25 when the Debtor can't meet them, which is what the evidence

1 shows? Guess what, the bonds get called. The evidence shows
2 the bonds aren't going to get called here, but --

3 MR. RIOS: But the -- what the harm is to the
4 sureties here is changing the incentive of new (indiscernible)
5 what I put in my brief was, you know, it's like selling an
6 indulgence for a future sin. They could default, not use the
7 \$350 million on the surety bond obligations, and we would be
8 left with the anomalous situation where the sureties don't
9 have a right of restitution or subrogation or reimbursement
10 against the party that defaulted. That's the real harm here.
11 It's the changing in the structure.

12 I think Your Honor referred to it in the adversary
13 between the Apache sureties and the Debtor at a June 10th
14 hearing. Perhaps there's a change in the structure that would
15 affect the sureties. And that's really what we're -- our
16 gripe is about. And I don't think there's a binary choice
17 between this plan and (indiscernible) our appeal and
18 liquidation. I think the surety issues can be carved out for
19 consideration on appeal, without affecting the overriding --

20 THE COURT: What is the --

21 MR. RIOS: -- (indiscernible).

22 THE COURT: What is the evidence that supports what
23 you're telling me?

24 MR. RIOS: Well, just that the surety issues can be
25 carved out. And as Mr. Dane testified, obligations are going

1 to met for a long period of time, given the amount of funding
2 they have available, that these subrogation rights probably
3 aren't going to come up for the two years Your Honor is
4 talking about for the appeal to be resolved.

5 THE COURT: Yeah. But if they won't close not
6 knowing if they have the obligation, what good does this do?

7 MR. RIOS: Well, I don't know why they would not
8 close under those circumstances --

9 THE COURT: Well --

10 MR. RIOS: -- where it's --

11 THE COURT: -- is there any evidence --

12 MR. RIOS: -- so remote --

13 THE COURT: Is -- do you have any evidence that they
14 will?

15 MR. RIOS: I -- no. I mean, that's their decision.

16 THE COURT: Well, I think that --

17 MR. RIOS: I --

18 THE COURT: -- the testimony I have so far is they
19 won't. That may be wrong, but that's at least all that I've
20 got.

21 MR. RIOS: No, I understand that. But you know, I -
22 - as I tried to point out in examining Mr. Dane, I think, you
23 know, one of the issues here is: If you can carve out the
24 surety issues and they're a sufficiently remote risk for the
25 present, and it's going to cost tens of millions of dollars to

1 you if you don't close, why wouldn't you close and just see
2 what happens on the sureties issue? That seems like a logical
3 punt (indiscernible) to this whole thing. You -- it wouldn't
4 require, you know, any risk to any party.

5 THE COURT: Thank you, sir.

6 MR. RIOS: Thank you.

7 THE COURT: Mr. Perez.

8 MR. PEREZ: Yes, Your Honor, very briefly.

9 Your Honor, as it relates to Section 365, I'm not
10 quite sure that I really understood the argument. We are not
11 assuming or assigning any of the surety -- you know, the
12 agreements, the indemnity or anything like that. They are not
13 -- that's not part of what the credit bid purchaser is
14 assigning. I'm not quite sure exactly what the exact argument
15 is, but I just don't view that as under 365.

16 Furthermore, Your Honor, I -- again, you know, we
17 never listed the federal leases for assignment under 365, on
18 the assumption -- on the assumption schedules. I think that
19 they are being sold and there's a procedure pursuant to, you
20 know, the regulations, for -- to basically change the owner of
21 those leases. But again, I'm not sure that's even relevant
22 because I'm not quite sure exactly what the 365 argument is.

23 With respect to 363, Your Honor, if you look at the
24 evidence, number one, I don't think that they've shown that
25 there's going to be any harm to them. Number -- and whereas,

1 in most cases, people do argue harm and the public interest, I
2 really think, in this case, we do have, you know, significant
3 unrefuted testimony as to the harm and the public interest.

4 I think, in Mr. Dane's declaration, he pointed out
5 that, if -- even if we delay this for a few months, we'll
6 lose, you know, the summer decommissioning period, and that
7 creates significantly more risk. And I think the only
8 testimony is, is that all of these various items are
9 interrelated, and you can't just, you know, basically -- I
10 think, in connection with the motion to reconsider, they're
11 not really asking you to reconsider. I think what they're
12 asking you is to vacate the confirmation order. And I'm not
13 quite sure that the Court, you know, can take like a pencil to
14 it.

15 So, Your Honor, I think that, based on the
16 evidentiary record and the four factors, that they haven't met
17 their burden. And again, the potential harm to staying this
18 and this plan unraveling is significant, both based on the --
19 basically unrefuted testimony from Mr. Dane as to what would
20 happen if this unravels and we have to file a Chapter 7, both
21 in his declaration and his life testimony.

22 Thank you, Your Honor. We would request that the
23 Court deny the motion, both for stay and to reconsider.

24 THE COURT: Thank you.

25 All right. I'm denying the motion on the following

1 grounds:

2 First, I find that there is no injury whatsoever to
3 the parties who are complaining. The evidence demonstrates
4 that the plan is designed to maximize the application of
5 resources to plugging and abandonment and asset retirement
6 obligations, some of which are the subject of the surety bonds
7 issued by the moving parties. Conversely, the evidence is
8 undisputed that, if the plan is confirmed, performance of
9 those obligations is more likely than not going to occur.
10 There is no guarantee they're going to occur, but there is
11 actually zero evidence in the record that they will not occur.

12 So I have a situation where the bonding companies
13 may have their bond obligations eliminated or minimized if
14 this plan is carried into action. And I have undisputed
15 evidence that this took years, months to develop; that the
16 Debtor will not be able to meet the plugging and abandonment
17 and ARO obligations if we don't confirm a plan; that
18 liquidation will not result in the high value that is being
19 achieved. And I conclude that, if we don't confirm the plan,
20 there is a great likelihood that the bonds will, in fact, be
21 called.

22 The return to the bonds for amounts that are called,
23 but also for amounts that are forecast to be called in the
24 future, which we can estimate, becomes an unsecured claim.
25 That unsecured claim in the amount of their claim that is

1 allowed, after appropriate hearing, will result in some
2 return. But I find that the amount that will be called on the
3 bonds is higher in the undisputed record if we don't proceed
4 with confirmation than if we do.

5 Now that covers a lot of what I'm doing here. It
6 decimates the third factor of whether granting the stay would
7 substantially -- excuse me -- the second factor of whether the
8 movant has made a showing of irreparable injury. They are not
9 injured, they are benefitted by what we are doing.

10 Now the argument is that this may all become moot on
11 appeal. If it becomes moot on appeal, that is an injury, but
12 not a very big one under the evidentiary record. They should
13 have perhaps some ability as interested parties in trying to
14 determine what the future rights are, even if they are
15 benefitted by confirmation of the plan, but it's not much in
16 the way of injury.

17 The first factor, which the Fifth Circuit regards as
18 the most important for a stay pending appeal, is whether the
19 movement -- movant has made a showing of likelihood of success
20 on the merits. Frankly, they haven't made any showing of
21 that, none.

22 The Court, in making its initial decision,
23 extensively referenced Midlantic, and that Midlantic has to
24 color how we apply the Bankruptcy Code to particular factual
25 situations. I'm not going to belabor the entire Midlantic

1 discussion we've had before, other than to say that nothing
2 I've heard today does anything other than strengthen my view
3 of the application of midlantic.

4 365, I agree with Mr. Perez, is irrelevant to the
5 sureties' rights. No one is transferring the bonds to
6 anywhere; they're staying the same. All that we are doing is
7 saying that property-related claims that exist today for
8 damages, ARO obligations, plugging and abandonment, the
9 purchaser may not be sued by the surety bond by any sort of
10 subrogation right if those were claims that could have been
11 liquidated and funded today. 363(f) allows that. 363(f) says
12 that, if there is something -- and it doesn't need to be a
13 lien; it can be any interest -- that is property-linked, we
14 can order the sale free and clear. That is all that we are
15 doing, and they are not being injured by that sale free and
16 clear.

17 We can only do that if one of the factors are met,
18 and one of those is that they could be compelled in a legal or
19 equitable proceeding to accept a money satisfaction of their
20 interest. Well, their interest is a subrogation right that
21 constitutes a debt. They compelled to take money in exchange
22 for the debt that they have to fund. I don't understand the
23 argument that we can't do a 363(f) sale, and I particularly
24 don't understand that in light of Midlantic.

25 The third factor is whether granting the stay would

1 substantially harm the other parties. I think it is fanciful
2 to think that it -- an appeal like this could make its way
3 through the last appellate court, which is the Supreme Court,
4 in the next couple of months. I think that my two-year
5 estimate is fanciful, if that's what we're being asked to do,
6 is to wait until cert is granted or denied.

7 And I accept Mr. Dane's testimony, although I'm
8 going to go on the low side of the testimony and find that the
9 deal is unlikely to close if we change it, modify our order,
10 and that the cost would be approximately \$350 million to the
11 estate. That is also the amount of the bond that I would
12 hypothetically require, if I granted the motion, which I'm not
13 going to grant. But for the purposes of the complete record,
14 if the District Court is reviewing whether this should occur
15 and determines that there should be a stay, my finding under
16 the evidentiary record is that the appropriate bond would be
17 \$350 million.

18 And finally, a factor that's normally not at the
19 forefront here is, and it here is at the forefront because of
20 Midlantic, and that is whether the granting of the stay would
21 serve the public interest.

22 The evidence, the position of the United States, the
23 position of all of the parties in the case is that this is the
24 only way of addressing the largest environmental obligor in
25 the Gulf of Mexico. This is the solution. Granting the

1 motion for reconsideration, so as to minimize the likelihood
2 that the solution would come about, would severely injure the
3 public interest. A stay of allowing a closing would severely
4 interest -- would severely injure the public interest.

5 Although, ordinarily, this is not the most important
6 factor, in this case, in my mind, it is a critical factor
7 because of what we are dealing with: Multiple entities,
8 multiple obligations, and ultimate responsibility of the
9 Government of the United States to protect the citizens of
10 this country. And I think I would do a great disservice if I
11 ignored the fourth factor or gave it simple lip service. This
12 is a major effort, it is in the public interest of the United
13 States.

14 I am denying the motion for reconsideration, I am
15 denying the motion for a stay pending appeal. And I am
16 alternatively finding that if a bond -- if a stay should be
17 granted, that the appropriate bond is \$350 million.

18 Mr. Perez, I'll ask you to upload a form of order
19 that denies this. I don't want it to repeat any of the
20 reasons. I just want it to say for the reasons set forth on
21 the Record. And I'll get that entered tomorrow, if you'll get
22 it filed by noon tomorrow.

23 MR. PEREZ: Yes, Your Honor.

24 THE COURT: Thank you. We're in adjournment.

25 MR. PEREZ: Thank you, Your Honor.

1 THE COURT: Thank you.

2 COUNSEL: Thank you, Your Honor. Thank you, Your
3 Honor.

4 (Proceedings concluded at 5:39 p.m.)

5 * * * * *

6 *I certify that the foregoing is a correct transcript*
7 *to the best of my ability due to the condition of the*
8 *electronic sound recording of the ZOOM/telephonic proceedings*
9 *in the above-entitled matter.*

10 /S./ MARY D. HENRY

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15 DATE FILED: JULY 9, 2021
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